2014

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

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ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER 9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act

Article 5. Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978

CHAPTER 15. Pat Harrison Waterway Commission and District

Article 3. Pat Harrison Waterway District

Sec.

51-15-163. Renewal of residential lease from district; determination of maximum annual rental; default or breach.

51-15-165. Renewal of commercial property lease from district; appraisal establishing fair market rental value required.

CHAPTER 37. Watershed Districts

WATERSHED REPAIR AND REHABILITATION COST-SHARE PROGRAM

51-37-3. Watershed Repair and Rehabilitation Cost-Share Program.

TITLE 53. OIL, GAS, AND OTHER MINERALS

CHAPTER 10. Interstate Mining Compact

53-10-1. Findings and purposes.

53-10-2. Membership.

53-10-3. Limitations.

53-10-4. Expenses.

53-10-5. General power of Governor and withdrawal.

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME TWELVE A

TITLE 51

WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER 1

Navigable Waters

§ 51-1-4. What constitutes public waterways; rights thereon; prohibited activities; penalties.

(1) Those portions of all natural flowing streams in this state having a mean annual flow of not less than one hundred (100) cubic feet per second, as determined and designated on appropriate maps by the Mississippi Department of Environmental Quality, shall be public waterways of the state on which the citizens of this state and other states shall have the right of free transport in the stream and the right to fish and engage in water sports.

Persons exercising the rights granted by this section shall do so at their own risk, and such persons, their heirs or others on their behalf shall not be entitled to recover any damages against any owner of property or an interest in property on or along such public waterways or against anyone using such property with permission of the owner for any injury to or death of persons or damage to property arising out of the exercise of rights granted by this section, other than those damages which may be recovered for intentional or malicious torts or for gross or willful negligence against the owner of property or an interest therein or against anyone using such property with permission of the owner.

(2) Nothing contained in this section shall authorize anyone utilizing public waterways, under the authority granted by this section, to trespass upon adjacent lands or to launch or land any commercial or pleasure craft along or from the shore of such waterways except at places established by public or private entities for such purposes.

(3) Nothing contained in this section shall authorize any person utilizing those public waterways, under the authority granted by this section, to disturb the banks or beds of such waterways or the discharge of any object or substance into such waters or upon or across any lands adjacent thereto or to hunt or fish or go on or across any adjacent lands under floodwaters beyond the natural banks of the bed of the public waterway. Floodwater which has overflowed the banks of a public waterway is not a part of the public waterway.

(4) The right of the public to use public waterways does not include the use of motorized vehicles in the beds of a public waterway without the written permission of the landowner. Any person who uses a motorized vehicle in the bed of a public waterway without the written permission of the landowner may be punished as provided in Section 97-17-93.

(a) It shall be unlawful for any person to operate any all-terrain vehicle, four-wheel-drive motorized vehicle, or other wheeled or tracked conveyance within the bed of a public waterway and following the meanders thereof in such a way as to cause damage to the streambed.

(b) It shall be unlawful for any person to offer a permission or a license for a fee for the operation of any of the conveyances prohibited in this subsection within the bed of a public waterway.

(c) A violation of this subsection shall be a Class II violation and, upon conviction thereof, may be punished as provided in Section 49-7-143.

(d) Nothing in this subsection shall be construed as prohibiting the normal, usual and ordinary fording of streams by persons authorized to do so for legitimate recreational, agricultural, forestry or other lawful purposes.

(5) Nothing contained in this section shall be construed to prohibit the construction of dams and reservoirs by the State of Mississippi or any of its agencies or political subdivisions, or riparian owners, in the manner now or hereafter authorized by law, or in any way to affect the rights of riparian landowners along such waterways except as specifically provided hereinabove or to amend or repeal any law relating to pollution or water conservation, or to affect in any manner the title to the banks and beds of any such stream or the

title to any minerals thereunder, or to restrict the mining or extraction of such minerals or the right of ingress and egress thereto.

(6) The provisions of this section limiting the liability of owners of property along public waterways and persons using such property with permission of the owners shall not be construed to limit any rights of claimants for damages under federal statutes or acts applying to navigable streams or waterways or any other civil causes of action subject to admiralty or maritime jurisdiction, nor shall those provisions be construed to limit the rights of any parties involved in litigation founded upon the commercial or business usage of any navigable streams or waterways.

(7) This section shall apply only to natural flowing streams.

(8) Any lake hydrologically connected to a natural flowing stream and listed as a public waterway under subsection (1) on July 1, 2000, and subsequently removed from that list before July 1, 2001, by the Commission on Environmental Quality because the lake did not meet the requirements of subsection (1), shall be presumed to be a public waterway until a court of competent jurisdiction determines otherwise. Nothing in this subsection shall be construed to determine the property rights in the bed or banks of the lake, the right of ingress or egress across private property to the lake, or mineral interests.

SOURCES: Codes, 1942, §§ 8413.5, 8413.6; Laws, 1972, ch. 361, §§ 1, 2; Laws, 1988, ch. 598, § 1; Laws, 1994, ch. 653, § 1; Laws, 2002, ch. 368, § 1; Laws, 2003, ch. 482, § 1; Laws, 2008, ch. 545, § 1, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment, in (1), deleted "and its bed" following "free transport in the stream" in the first sentence, and rewrote the second sentence; added (4)(a) through (d); and made minor stylistic changes.

ATTORNEY GENERAL OPINIONS

Enforcement officers of the Mississippi Department of Wildlife, Fisheries and Parks should regard the location of the "ordinary and natural banks" of public waterways as a factual determination which must be made on a case by case basis when enforcing criminal and game laws, and prosecutors should be prepared to show proof of the locations of banks to the court hearing the matter. Polles, March 30, 2007, A.G. Op. #07-00134, 2007 Miss. AG LEXIS 92.

CHAPTER 3

Water Resources; Regulation and Control

ARTICLE 1.

GENERAL PROVISIONS.

§ 51-3-1. Declaration of policy on conservation of water resources.

JUDICIAL DECISIONS

1. Groundwater withdrawal permits.
Mississippi Department of Environmental Quality Permit Board did not err in granting groundwater withdrawal permits to a county utility authority because the factors it considered were reasonable, it made specific findings as to each factor, and its findings were supported by substantial evidence; the utility authority owned the land upon which it would install wells for the groundwater withdrawal and planned to use the water for public water supply, the highest-ranked beneficial use of water. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

§ 51-3-13. Consideration of applications; criteria.

JUDICIAL DECISIONS

1. Groundwater withdrawal permits.
Mississippi Department of Environmental Quality Permit Board did not err in granting groundwater withdrawal permits to a county utility authority because the factors it considered were reasonable, it made specific findings as to each factor, and its findings were supported by substantial evidence; the utility authority owned the land upon which it would install wells for the groundwater withdrawal and planned to use the water for public water supply, the highest-ranked beneficial use of water. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

Mississippi Department of Environmental Quality Permit Board's decision to grant groundwater withdrawal permits to a county utility authority did not violate a utility company's rights because the permits did not allow the utility authority to sell in the company's certificated area; the utility authority intended to expand its regional water system by building wells on land it owned in the company's certificated area and selling water to customers outside of the company's certificated area. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

§ 51-3-25. Regulatory authority of commission.

ATTORNEY GENERAL OPINIONS

It is within the authority of Commission on Environmental Quality, as provided in this section, to prescribe regulations which set out conditions for the issuance of the written authorizations consistent with § 51-3-39. Such regulations may also allow for public input prior to the issuance of the written authorization and may provide that the written authorization be in the from of a permit. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

The Commission on Environmental Quality may, as a part of its regulatory authority in subsection (f) of this section, promulgate regulations regarding "high hazard dams", and require compliance therewith, for those dams which are exempted from the "written authorization"

requirements of § 51-3-39(1)(a). Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

§ 51-3-39. Construction, modification, and inspection of dams and reservoirs.

ATTORNEY GENERAL OPINIONS

It is within the authority of Commission on Environmental Quality, as provided in § 51-3-25, to prescribe regulations which set out conditions for the issuance of the written authorizations consistent with this section. Such regulations may also allow for public input prior to the issuance of the written authorization and may provide that the written authorization be in the from of a permit. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

The Commission on Environmental Quality may, as a part of its regulatory authority in § 51-3-25(f), promulgate regulations regarding "high hazard dams", and require compliance therewith, for those dams which are exempted from the "written authorization" requirements of subsection (1)(a) of this section. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

ARTICLE 3.

MISSISSIPPI WATER RESOURCES COUNCIL.

SEC.

§§ 51-3-101 through 51-3-105. Repealed.

Repealed by operation of law, Laws of 2007, ch. 541 § 7, effective July 1, 2009.

§ 51-3-101. [Laws, 1992, ch. 545 § 1; reenacted and amended, Laws, 1995, ch. 584, § 1; reenacted without change, Laws, 1999, ch. 479, § 1; reenacted without change, Laws, 2003, ch. 358, § 1; reenacted without change, Laws, 2007, ch. 541, § 1, eff from and after July 1, 2007.]

§ 51-3-103. [Laws, 1992, ch. 545 § 2; reenacted and amended, Laws, 1995, ch. 584, § 2; reenacted and amended, Laws, 1999, ch. 479, § 2; reenacted and amended, Laws, 2003, ch. 358, § 2; reenacted without change, Laws, 2007, ch. 541, § 2, eff from and after July 1, 2007.]

§ 51-3-105. [Laws, 1992, ch. 545 § 3; reenacted and amended, Laws, 1995, ch. 584, § 3; reenacted without change, Laws, 1999, ch. 479, § 3; reenacted and amended, Laws, 2003, ch. 358, § 3; reenacted without change, Laws, 2007, ch. 541, § 3, eff from and after July 1, 2007.]

Editor's Note — Former § 51-3-101 created the Mississippi Water Resources Advisory Council.

Former § 51-3-103 related to council membership, terms of office, officers and general administration.

Former § 51-3-105 required the council to report on the status of the state's water resources.

§ 51-3-106. Repeal of sections 51-3-101 through 51-3-105.

Sections 51-3-101 through 51-3-105 shall stand repealed after July 1, 2009.

SOURCES: Laws, 1995, ch. 584, § 5; Laws, 1999, ch. 479, § 4; Laws, 2003, ch. 358, § 4; Laws, 2007, ch. 541, § 4, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted "51-3-101" for "51-3-1" and extended the date of the repealer for §§ 51-3-101 through 51-3-105 from July 1, 2007, until July 1, 2009.

CHAPTER 4

Mississippi Scenic Streams Stewardship Act

SEC.

§ 51-4-21.3. Eligibility of portion of Pascagoula River for nomination to Program.

In accordance with Section 51-4-7, the Pascagoula River from the confluence of the Chickasawhay and Leaf Rivers in George County to its mouth in Jackson County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 459, § 1, eff from and after passage (approved Apr. 29, 2004.)

Editor's Note — This section was originally codified as § 51-4-23.5, but has been renumbered as § 51-4-21.3 at the direction of Codification Counsel.

§ 51-4-21.4. Eligibility of portion of Bear Creek for nomination to Program.

In accordance with Section 51-4-7, a loop of Bear Creek in Tishomingo County from the Mississippi-Alabama state line where it enters Mississippi to

the Mississippi-Alabama line where it reenters Alabama is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 459, § 2, eff from and after passage (approved Apr. 29, 2004.)

Editor's Note — This section was originally codified as § 51-4-23.6, but has been renumbered as § 51-4-21.4 at the direction of Codification Counsel.

§ 51-4-21.5. Eligibility of portions of Red Creek for nomination to Program.

In accordance with Section 51-4-7, Red Creek from Mississippi Highway 26 in Stone County to its confluence with Black Creek in Jackson County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 321, § 1, eff from and after passage (approved Mar. 14, 2005.)

Cross References — Designation of portions of Red Creek as State Scenic Stream, see § 51-4-23.7.

§ 51-4-21.6. Eligibility of portions of Escatawpa River for nomination to Program.

In accordance with Section 51-4-7, the Escatawpa River from the Alabama/Mississippi state line in George County to its confluence with the Pascagoula River in Jackson County is designated as eligible for nomination to the state Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 337, § 1, eff from and after passage (approved Mar. 14, 2005.)

§ 51-4-21.7. Eligibility of portions of Tombigbee River for nomination to Program.

In accordance with Section 51-4-7, the Tombigbee River flowing through Itawamba County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2006, ch. 349, § 1, eff from and after passage (approved Mar. 13, 2006.)

§ 51-4-21.8. Eligibility of portions of Bogue Chitto River for nomination to Program.

In accordance with Section 51-4-7, the Bogue Chitto River from the confluence with Boone Creek in Lincoln County to the Mississippi-Louisiana

state line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 313, § 1, eff from and after passage (approved Mar. 12, 2007.)

§ 51-4-21.9. Eligibility of portions of Noxubee River for nomination to Program.

In accordance with Section 51-4-7, the Noxubee River in Noxubee County from the Oktibbeha County Line to the Mississippi-Alabama line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 403, § 1, eff from and after passage (approved Mar. 15, 2007.)

§ 51-4-23.4. Designation of portion of Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties as State Scenic Stream.

Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties from Mississippi Highway 589 in Lamar County to its confluence with the Pascagoula River, which was designated as eligible for nomination under Section 51-4-17, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 402, § 1, eff from and after passage (approved Apr. 22, 2004.)

§ 51-4-23.5. Designation of portion of Pascagoula River as State Scenic Stream.

In accordance with Section 51-4-7, the Pascagoula River from the confluence of the Chickasawhay and Leaf Rivers in George County to its mouth in Jackson County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.3, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 367, § 1, eff from and after passage (approved Mar. 15, 2005.)

§ 51-4-23.6. Designation of portion of Bear Creek as State Scenic Stream.

A loop of Bear Creek in Tishomingo County from the Mississippi-Alabama state line where it enters Mississippi to the Mississippi-Alabama state line where it re-enters Alabama, which was designated as eligible for nomination

under Section 51-4-21.4, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 351, § 1, eff from and after passage (approved Mar. 14, 2005.)

§ 51-4-23.7. Designation of portion of Red Creek as State Scenic Stream.

In accordance with Section 51-4-7, Red Creek from Mississippi Highway 26 in Stone County to its confluence with Black Creek in Jackson County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.5, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2006, ch. 407, § 1, eff from and after passage (approved Mar. 15, 2006.)

Cross References — Eligibility of portions of Red Creek for nomination to State Scenic Streams Stewardship Program, see § 51-4-21.5.

§ 51-4-23.8. Designation of portion of Tombigbee River as State Scenic Stream.

In accordance with Section 51-4-7, the Tombigbee River flowing through Itawamba County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.7, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 448, § 1, eff from and after passage (approved Mar. 26, 2007.)

Editor's Note — Eligibility for designation as scenic stream, see § 51-4-7.
Nomination and designation as scenic stream, see § 51-4-9.
Eligibility of portions of Tombigbee River for nomination to Program, see § 51-4-21.7.

§ 51-4-23.9. Designation of portion of Noxubee River as State Scenic Stream.

In accordance with Section 51-4-7, the Noxubee River in Noxubee County from the Oktibbeha County line to the Mississippi-Alabama line, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.9, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2008, ch. 411, § 1, eff from and after passage (approved Mar. 31, 2008.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.

Nomination and designation as scenic stream, see § 51-4-9.
Eligibility of portions of Noxubee River for nomination to Program, see § 51-4-21.9.

§ 51-4-23.10. Designation of portion of Escatawpa River as State Scenic Stream.

In accordance with Section 51-4-7, the Escatawpa River from the Alabama-Mississippi state line in George County to its confluence with the Pascagoula River in Jackson County which was designated as eligible for nomination to the state Scenic Streams Stewardship Program under Section 51-4-21.6, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2009, ch. 395, § 1, eff from and after passage (approved Mar. 18, 2009.)

Cross References — Eligibility for designation as scenic stream generally, see § 51-4-7.
Nomination and designation as scenic stream generally, see § 51-4-9.
Eligibility of portions of Escatawpa River for nomination to program, see § 51-4-21.6.

CHAPTER 5

Subsurface Waters; Well Drillers

SEC.

§ 51-5-1. Water well contractor's license; fee; expiration and renewal; continuing education requirements; license exemption.

(1) Every person, firm and corporation desiring to engage in the business of drilling and developing wells for underground water, including drilling any wells or boreholes that may penetrate water-bearing formations, in the State of Mississippi, shall file an application with the Mississippi Commission on Environmental Quality (commission) for a water well contractor's license, using forms prepared by the commission, setting out qualifications therefor and providing such other information, including test scores from any examination, oral or written, as may be required by the commission. Developing wells shall include the installation and servicing of pumps and well equipment, but shall not include the installation and servicing of above-ground pumps. The fee for such license and renewal thereof shall be One Hundred Dollars ($100.00) for each year.

(2) All licenses shall expire on June 30 of each year. Licenses shall not be transferable or assignable. A license may be renewed and shall be renewable

without examination for the ensuing year by making an application not later than the expiration date, providing certification that the required continuing education units have been completed, and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until the new license is issued or until the applicant is notified by the commission that the request for renewal has been denied. If an application has not been received by the commission by the expiration date, the license will expire and the licensee will be prohibited from performing any work for which the license is required until such time as the license has been reinstated. On application made after June 30 of each year, the license may be reinstated only upon compliance with all requirements for renewal, including payment of the applicable fee, plus a penalty of Ten Dollars ($10.00) for each month or fraction thereof the application is delinquent. Failure to request reinstatement within one (1) year after a license has expired may, in the discretion of the commission, be deemed a waiver of the licensee's right to reinstatement without examination; and if he should request reinstatement thereafter, the commission may require that he be considered a new applicant subject to all requirements for initial licensing including the requirement for examination.

(3) Nothing in this chapter shall prevent a person who has not obtained a license pursuant thereto from constructing a water well on his own or leased property intended for use only in a single family house which is his permanent residence, or intended for use only for watering livestock on his farm, and where the waters to be produced are not intended for use by the public or any residence other than his own. However, such person shall comply with all rules and regulations as to the construction of wells as set out by the provisions of this chapter.

(4) Nothing in this chapter shall prevent a person who has not obtained a license pursuant thereto from constructing a water well on his own or leased property intended for use only for irrigating crops on his farm. However, such person shall comply with all rules and regulations as to the construction of wells as set out by the provisions of this chapter.

(5) This section shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed well contractor.

(6) Any person whose license has been revoked may, upon application for a new license, be required, in the discretion of the board, to take the examination and in all other ways be considered as a new applicant.

(7) As used in this chapter, the terms "State Board of Water Commissioners," "board" and "commission" mean the Mississippi Commission on Environmental Quality.

SOURCES: Codes, 1942, § 5956-31; Laws, 1966, ch. 269, § 1; Laws, 1978, ch. 371, § 1; Laws, 2010, ch. 411, § 1; Laws, 2011, ch. 355, § 1; Laws, 2014, ch. 369, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2010 amendment rewrote the section.

The 2011 amendment extended the date of the repealer for (4) by substituting "July 1, 2014" for "July 1, 2011."

The 2014 amendment redesignated former (4)(a) as present (4); and deleted (4)(b), which read "This subsection shall repeal on July 1, 2014."

Cross References — Commission on Environmental Quality generally, see §§ 49-2-5 et seq.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 51-5-1, the fee that the Commission of Environmental Quality can charge for an application, including examination, for a drilling license and for each year of renewal is $ 100; furthermore, the section contemplates that the examination fee be paid to the Commission thereby precluding applicants from paying a fee directly to a third party testing service. Chisolm, May 2, 2003, A.G. Op. 03-0191.

§ 51-5-3. Qualifications for license.

(1) In order to be licensed as a water well contractor in the State of Mississippi, the applicant must be qualified as set out below:

(a) Be at least twenty-one (21) years of age;

(b) Be of good moral character;

(c) Demonstrate to the satisfaction of the commission a reasonable knowledge of this chapter and the rules and regulations adopted by the commission under the provisions of this chapter;

(d) Possess the necessary drilling equipment, or present to the commission sufficient evidence to show that he has access to the use of such equipment at any time he needs it; and

(e) Have not less than three (3) years' experience in the work for which he is applying for a license.

(2) Each applicant shall be required to present to the examining committee three (3) notarized affidavits from licensed water well contractors showing that such applicant has the necessary qualifications and experience to meet the above-stated standards.

SOURCES: Codes, 1942, § 5956-32; Laws, 1966, ch. 269, § 2; Laws, 1985, ch. 459, § 31; Laws, 2010, ch. 411, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1)(d), substituted "commission" for "board"; and in (2), substituted "licensed water well contractors" for "licensed drillers."

Cross References — Commission on Environmental Quality generally, see §§ 49-2-5 et seq.

Commission as meaning the Commission on Environmental Quality, see § 51-5-1.

§ 51-5-5. Powers of Mississippi Commission on Environmental Quality to carry out provisions of this chapter.

(1) In carrying out the provisions of this chapter, the commission shall have, but shall not be limited to, the following powers:

(a) Make reasonable rules and regulations for the purpose of carrying out the provisions of this chapter.

(b) Prepare required forms and establish other procedures to govern the submission of applications, reports, and other information authorized to be sent the commission as required by this chapter.

(c) Prepare and give reasonable oral and/or written examinations for license applicants.

(d) Deposit all fees in a special fund for the implementation of this chapter.

(e) Enter upon and be given access to any premises for the purpose of inspecting water wells.

(f) Require and approve the completion of continuing education units for license renewal applicants.

(2) If the commission finds that compliance with all the requirements of this chapter would result in undue hardship, an exemption from any one or more of such requirements may be granted by the commission to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this chapter.

SOURCES: Codes, 1942, § 5956-33; Laws, 1966, ch. 269, § 3; Laws, 2010, ch. 411, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the introductory paragraph in (1), substituted "the commission shall have, but shall not be limited to, the following powers" for "the board of water commissioners is empowered, but not limited to, to do the following"; added (1)(f); and in (2), substituted "If the commission finds" for "Where the board finds" and "commission" for "board."

Cross References — Commission on Environmental Quality generally, see §§ 49-2-5 et seq.

Commission as meaning the Commission on Environmental Quality, see § 51-5-1.

§ 51-5-15. Advisory committee.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

CHAPTER 8

Joint Water Management Districts

SEC.

§ 51-8-3. Purpose of district.

ATTORNEY GENERAL OPINIONS

The board of commissioners of a joint water management district may spend district funds for advertising and educational purposes as described in the water conversation initiative proposal if the board finds, as reflected by an order entered upon the minutes, that this expenditure of funds is necessary to fulfill the purposes of the district. Griffith, Apr. 23, 2004, A.G. Op. 04-0156.

§ 51-8-43. Special tax levy; district authorized to expend tax funds on projects related to Mississippi Delta Study.

(1) Except as otherwise provided in subsection (2), the governing body of any local governmental unit which is a member of any such district may, according to the terms of the resolution, levy a special tax, not to exceed two (2) mills, on all of the taxable property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used for preparation and implementation of the district's water management plan, exclusive of capital expenditures, and operation of the administrative office of the district. Provided, however, that such special tax shall not be levied against any property in any portion of such district where the district has relinquished and surrendered its prior right to provide a particular service, as provided elsewhere in this chapter.

(2) The Board of Commissioners of the Yazoo-Mississippi Joint Water Management District is authorized to expend funds generated from the special tax levy under subsection (1) in connection with projects under the USDA, NRCS Mississippi Delta Comprehensive, Multipurpose Water Resource Plan hereinafter referred to as the "Mississippi Delta Study." Such projects include low flows, interbasin transfers of new water supplies, on-farm storage reservoirs or conservation, and implementation activities such as the Sunflower River Low Flow Project and Well Field Project in Coahoma County, Mississippi. Expenditures under this subsection may include in-kind expenditures as well as direct expenditures, the cost and expenses of construction, operation and maintenance of the projects, and the cost and expenses of an indirect nature, such as technological assistance, engineering and scientific evaluation and analysis by technical personnel, labor, transportation and any expenditure that is intended to satisfy the districts' in-kind obligations in connection with the projects. However, the expenditures authorized by this subsection shall not extend to any project that relates to, encompasses or includes effluent treatment facilities or any water supply system to which the Safe Drinking Water Act applies, and any other projects that are determined by the district to be beyond the scope of the Mississippi Delta Study Projects.

SOURCES: Laws, 1985, ch. 481, § 22; Laws, 2005, ch. 363, § 1, eff from and after passage (approved Mar. 15, 2005.)

Amendment Notes — The 2005 amendment added "Except as otherwise provided in subsection (2)" at the beginning of (1); and added (2).

§ 51-8-53. Annexation of adjacent area; services within annexed territory.

ATTORNEY GENERAL OPINIONS

A city may be annexed by a joint water management district in accordance with Section 51-8-53, without affecting the continuing existence of another joint water management district, so long as the services offered by the two districts do not overlap and the total ad valorem taxation assessed by the participating governmental units on property in the city does not exceed the maximum permitted in Section 51-8-43. Griffith, Jan. 20, 2006, A.G. Op. 05-0630.

CHAPTER 9

Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act

ARTICLE 1.

DEVELOPMENT OF REGION BORDERING PEARL RIVER.

§ 51-9-1. Pearl River Industrial Commission created.

There is created the Pearl River Industrial Commission, composed of Hinds, Leake, Madison, Neshoba, Rankin and such other counties in the state through which or bordering which the Pearl River runs. The Governor shall appoint one (1) member to the commission from each county from a list of three (3) names to be submitted by the board of supervisors in each participating county. The three (3) names submitted by the board of supervisors of Madison County and the board of supervisors of Rankin County shall be the names of persons who reside on and are holders of residential leases from the Pearl River Valley Water Supply District that are located in Madison County and Rankin County, respectively, or who reside in established subdivisions in Madison County and Rankin County, respectively, in which some of the residential property of the subdivision is leased from the Pearl River Valley Water Supply District. In his appointment the Governor shall designate the chairman and vice chairman of the commission. Each member of the commission shall serve for a term concurrent with that of the Governor. The board of supervisors in any county through which or by which the Pearl River runs,

other than those counties named above, may bring that county in as a member of the commission by resolution presented to the Governor; and the board of supervisors in such county may, in its discretion, call an election before taking such action, the election to be held as nearly as possible in the same manner other elections are held in the county.

The member appointed from Madison County who is serving on July 1, 2012, shall continue to serve until January 1, 2013, after which date the Governor shall appoint a member from Madison County who meets the residency requirements of this section. The person appointed under the provisions of this paragraph shall serve for the remainder of the unexpired term.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5; Laws, 1979, ch. 309; Laws, 2012, ch. 549, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment, in the first paragraph, deleted "hereby" preceding "created" in the first sentence, in the third sentence, inserted "the board of supervisors of Madison County", substituted "that are located in Madison County and Rankin County" for "which are located in Rankin County", and added "respectively, or who reside in established subdivisions in Madison County and Rankin County, respectively, in which some of the residential property of the subdivision is leased from the Pearl River Valley Water Supply District" at the end, inserted the fifth sentence, and in the last sentence, substituted "before taking such action, the election" for "prior to taking such action, said election"; and added the last paragraph.

ARTICLE 3.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT.

SEC.
51-9-107. Board of directors.

§ 51-9-103. Legislative determination and declaration of policy.

ATTORNEY GENERAL OPINIONS

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

§ 51-9-107. Board of directors.

All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) Each member of the Pearl River Industrial Commission whose county becomes a part of the Pearl River Valley Water Supply District shall be a member of the Board of Directors of the Pearl River Valley Water Supply

District. Such directors shall serve on this board during their term of office on the Pearl River Industrial Commission. In addition, the board of supervisors of each county that becomes a part of the district shall appoint one (1) additional member, who shall serve for a term concurrent with the terms of the members of the board of supervisors. The members shall be appointed at the first meeting of the board of supervisors in January after the supervisors take office. The members appointed from Madison County and Rankin County shall be persons who reside on and are holders of residential leases from the Pearl River Valley Water Supply District that are located in Madison County and Rankin County, respectively, or who reside in established subdivisions in Madison County and Rankin County, respectively, in which some of the residential property of the subdivision is leased from the Pearl River Valley Water Supply District.

The members appointed from Madison County and Rankin County who are serving on July 1, 2012, shall continue to serve until January 1, 2013, after which date the Board of Supervisors of Madison County and the Board of Supervisors of Rankin County each shall appoint one (1) member who meets the residency requirements of this section. The persons appointed under the provisions of this paragraph shall serve for the remainder of the unexpired term.

(b) The Mississippi Commission on Environmental Quality, the Mississippi Commission on Wildlife, Fisheries and Parks, Forestry Commission and the State Board of Health of the State of Mississippi shall each appoint one (1) director from that department to serve on the Board of Directors of the Pearl River Valley Water Supply District to serve at the pleasure of the respective board appointing him. From and after January 1, 2013, each of the members appointed under this paragraph (b) shall be a person who resides on and is a holder of a residential lease from the Pearl River Valley Water Supply District.

(c) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the clerk and by him preserved.

(d) Each director shall receive per diem compensation in the amount as provided in Section 25-3-69 for attending each meeting of the board and for each day spent in attending to the necessary business of the district and shall be reimbursed for actual expenses thus incurred upon express authorization of the board, including travel expenses, as provided in Section 25-3-41.

(e) The board of directors shall annually elect from its number a president and a vice president of the district, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except

the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine those offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), and the premiums on those bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of office and account for all money which shall come into his custody as treasurer or director of the district.

SOURCES: Codes, 1942, § 5956-54; Laws, 1958, ch. 197, § 4; Laws, 1981, ch. 402, § 1; Laws, 2000, ch. 516, § 90; Laws, 2012, ch. 549, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment, in (a), in the first paragraph, in the third sentence, added "who shall serve for a term concurrent with the terms of the members of the board of supervisors" to the end and made minor stylistic changes, added the last two sentences, and added the last paragraph; added the last sentence in (b); deleted "said" preceding "clerk" near the end of (c); and substituted "those bonds" for "said bonds" in the next-to-last sentence of (e).

§ 51-9-121. Powers of district.

ATTORNEY GENERAL OPINIONS

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

The Pearl River Valley Water Supply District is not subject to the zoning ordinances and building codes of the counties or municipalities in which the district is located. Clark, May 20, 2004, A.G. Op. 04-0195.

Provisions of Section 51-9-121 allow a water supply district to add mosquito control services as a separate item on its water bills and to collect same. Water or other services could not be disconnected for failure to pay the mosquito control charge. Clark, Sept. 30, 2005, A.G. Op. 05-0460.

ARTICLE 5.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT RESERVOIR POLICE OFFICER LAW OF 1978.

SEC.

§ 51-9-171. Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978.

This article shall be cited as "The Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978."

SOURCES: Laws, 1978, ch. 511, § 1; Laws, 2000, ch. 316, § 1; Laws, 2012, ch. 477, § 2, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "Police" for "Patrol."

§ 51-9-175. Appointment; oath; badge; powers; reimbursement by district.

(1) The board of directors of the district may appoint and commission qualified persons as reservoir police officers of the district. Any such reservoir police officer so appointed shall be certified by the Board on Law Enforcement Officer Standards and Training or in accordance with the Board on Law Enforcement Officer Standards and Training and shall attain certification or recertification within one (1) year of appointment, and shall at all times be answerable and responsible to the board of directors of the district.

(2) A reservoir police officer appointed and commissioned as provided in subsection (1) of this section shall, before entering upon his duties as such officer, take the oath of office prescribed by Section 268, Mississippi Constitution of 1890, which shall be endorsed upon his commission. The commission, with the oath endorsed upon it, shall be entered in the official minute book of the district.

(3) A reservoir police officer appointed and commissioned pursuant to the provisions of this article, shall, while engaged in the performance of his duties, carry on his person a badge identifying him as a reservoir police officer of the district and an identification card issued by the district. When in uniform, each such reservoir police officer shall wear his badge in plain view.

(4) A reservoir police officer may exercise the same powers of arrest and the right to bear firearms that may be exercised by any state, municipal or other police officer in this state, but only with respect to violations of law or violations of regulations adopted pursuant to Section 51-9-127, which are committed on the property owned by the district. This includes property which is owned by the district but has been leased or rented to other parties. Any right granted under this subsection in no way relieves the requirements of appropriate affidavit and warrant for arrest from the appropriate jurisdiction and authority pursuant to the laws of this state.

(5) On behalf of each person who is trained as a reservoir police officer at the Mississippi Law Enforcement Officers' Training Academy, the district shall

be required to pay to the academy at least an amount equal to the per student cost of operation of the academy as tuition.

SOURCES: Laws, 1978, ch. 511, § 3; Laws, 2000, ch. 316, § 2; Laws, 2008, ch. 480, § 1; Laws, 2012, ch. 477, § 3, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2008 amendment substituted "certified by the Board ... within one (1) year of appointment" for "a full-time employee of the district and shall not be employed by any privately owned guard or security service" in (1).

The 2012 amendment substituted "police" for "patrol" throughout the section; and made minor stylistic changes.

§ 51-9-176. Authority to render law enforcement services in emergency situations and participate in multijurisdictional training, law enforcement and emergency operations; command structure; reimbursement for expenses.

At the request of a Mississippi municipality, county, other legal political subdivision of the state or a Mississippi state agency, federal agency, or under a declaration of a state of emergency or disaster by the Governor or the President of the United States, the officers of the Pearl River Valley Water Supply District Reservoir Police may render law enforcement services including search and rescue using Pearl River Valley Water Supply District Reservoir Police equipment. Officers of the Pearl River Valley Water Supply District Reservoir Police may also participate in joint multijurisdictional training exercises, multijurisdictional law enforcement operations and multijurisdictional search and rescue operations. The officers may exercise the law enforcement authority granted under Section 51-9-175 in the jurisdiction of the training, operation or emergency. The Pearl River Valley Water Supply District Reservoir Police, with the approval of the governing board, may enter into agreements with jurisdictions regarding the circumstances in which emergency assistance may be provided and administered. Unless otherwise directed by an agreement, officers will remain under the authority of the Pearl River Valley Water Supply District Reservoir Police Chief or to whomever and to what level of authority is delegated by the Pearl River Valley Water Supply District Reservoir Police Chief or by assignment through the National Incident Management System or by the stated declaration of disaster or emergency. The Pearl River Valley Water Supply District Reservoir Police may seek reimbursement for services and related expenses if available.

SOURCES: Laws, 2008, ch. 522, § 2; Laws, 2012, ch. 477, § 1, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment added the second and third sentences; and substituted "Reservoir Police" for "Patrol" throughout; and added the second and third sentences.

§ 51-9-177. Arrest and detention.

A person arrested by a reservoir police officer shall be handled or processed in the jurisdiction in which the offense was committed, in the same manner as if the arrest had been made by a sheriff or constable. If the reservoir police officer detains any person arrested by him, he shall forthwith deliver the arrested person to the sheriff of the county in which the offense was committed, and the reservoir police officer shall have no further authority as to the custody of such arrested person.

SOURCES: Laws, 1978, ch. 511, § 4; Laws, 2000, ch. 316, § 3; Laws, 2012, ch. 477, § 4, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "police" for "patrol" throughout the section.

§ 51-9-179. Liability of district for acts.

The district, by the act of the appointment of any reservoir police officer, shall be liable and responsible for all acts of such reservoir police officer while he is acting or purporting to act under the provisions of this article, whether such action be authorized by this article or not; further, the district shall indemnify the State of Mississippi and any sheriff for any loss, costs or expenses incurred by virtue of any act, deed or omission committed by a reservoir police officer while he is acting or purporting to act under the provisions of this article, whether the act, deed or omission is authorized by this article or not.

SOURCES: Laws, 1978, ch. 511, § 5; Laws, 2000, ch. 316, § 4; Laws, 2012, ch. 477, § 5, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "police" for "patrol" throughout the section and made minor stylistic changes.

§ 51-9-181. Bonds.

Each reservoir police officer commissioned under this article shall file a bond in the sum of Ten Thousand Dollars ($10,000.00) with the district for the lawful and faithful performance of his duties. The cost of the bond shall be borne by the district. The filing of the bond shall not relieve the district from any civil liability it may otherwise incur in accordance with the provisions of Section 51-9-179. The district shall indemnify and hold the State of Mississippi, the Commissioner of Public Safety, and any sheriff harmless from any and all liability which any or all of them might otherwise incur for the negligent or unlawful acts of a reservoir police officer.

SOURCES: Laws, 1978, ch. 511, § 6; Laws, 2000, ch. 316, § 5; Laws, 2012, ch. 477, § 6, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "police" for "patrol" throughout the section; and made minor stylistic changes.

§ 51-9-183. Termination of authority.

The powers and authority of any reservoir police officer, whether appointed or commissioned pursuant to the provisions of this article or any former law of this state, may be terminated at any time by the board of directors of the district.

SOURCES: Laws, 1978, ch. 511, § 7; Laws, 2000, ch. 316, § 6; Laws, 2012, ch. 477, § 7, eff from and after passage (approved Apr. 24, 2012.)

Amendment Notes — The 2012 amendment substituted "police" for "patrol."

ARTICLE 7.

METROPOLITAN AREA WATER SUPPLY ACT.

§ 51-9-201. Contracts between district and public agencies.

ATTORNEY GENERAL OPINIONS

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

CHAPTER 11

Pearl River Basin Development District

SEC.
51-11-5. Board of directors.

§ 51-11-5. Board of directors.

(1) All powers of the Pearl River Basin Development District, hereinafter referred to in this chapter as the district, shall be exercised by a board of directors to be selected and composed as follows:

(a) The Mississippi Commission on Environmental Quality, the Mississippi Commission on Wildlife, Fisheries and Parks, the Forestry Commission, and the State Board of Health of the State of Mississippi shall each appoint one (1) director to serve on the board of directors of the district, each such director to serve at the pleasure of the respective state agency appointing him but not to exceed a six-year term.

(b) The board of supervisors of each county which elects to become a member of the district shall appoint two (2) directors from that county, each of whom shall serve for a term of six (6) years or until his successor is

appointed by the board of supervisors of that county and qualified. In making its initial appointment of directors, the board of supervisors of each member county shall appoint one (1) of its two (2) directors to serve for a term of three (3) years or until his successor is appointed and qualified.

(c) In addition to the two (2) directors in paragraph (b), each county shall be entitled to additional representation on the board based on its annual contribution for the support of the district required under Section 51-11-31. If the annual contribution of a county as certified under Section 51-11-31 is more than One Hundred Thousand Dollars ($100,000.00), the county may appoint one (1) additional director for each increment of One Hundred Thousand Dollars ($100,000.00), to be contributed. Each additional director shall serve a term of six (6) years. If, in subsequent years, a county's contribution is reduced below One Hundred Thousand Dollars ($100,000.00), or a multiple thereof, a county's additional representation shall be reduced correspondingly. If a county's contribution representation is reduced, the board of supervisors of the county shall designate the director to be removed. No member county shall be entitled to more than three (3) additional directors under this paragraph.

(d) The Governor of the State of Mississippi shall appoint one (1) director residing within the district, who shall serve for a term of six (6) years or until his successor is appointed by the Governor and qualified.

(2) Each director shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(3) Each director shall receive a per diem in the amount as provided in Section 25-3-69 for attending each day's meeting of the board of directors and for each day spent in attending to the necessary business of the district and, in addition, he shall receive reimbursement for actual expenses, including travel expenses, as provided in Section 25-3-41.

(4) The board of directors shall annually elect from its number a president and vice president of the district and such other officers as, in the judgment of the board of directors, are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board of directors, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this chapter upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board of directors shall also appoint a secretary and a treasurer who shall be members of the board of directors, and it may combine those officers. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), with sureties qualified to do business in this state, and the premiums on said bonds shall be an expense of the district. Each such bond shall be payable to the State of Mississippi; the condition of each such bond shall be that the treasurer or director will faithfully perform all

duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the district.

(5) A majority of the total membership of the board of directors shall constitute a quorum at a regular meeting, or at any special meeting duly called and held for a specific purpose. All business of the district shall be transacted by the affirmative vote of a majority of the total membership of the board of directors.

(6) The State Auditor of Public Accounts shall annually audit the books and records of the district and make a report thereof to the Governor and the Legislature.

SOURCES: Codes, 1942, § 5956-253; Laws, 1964, ch. 255, § 3; Laws, 1981, ch. 402, § 2; Laws, 1984, ch. 426, § 1; Laws, 2000, ch. 516, § 92; Laws, 2004, ch. 403, § 1, eff from and after July 1, 2004.

Amendment Notes — The 2004 amendment designated the formerly undesignated first paragraph as (1); added (1)(c) and redesignated former (c) as (1)(d); and redesignated former (d) through (h) as present (2) through (6).

§ 51-11-13. Additional powers of the district.

ATTORNEY GENERAL OPINIONS

Upon withdrawal of member counties and municipalities of a development district in which are located recreational parks that were constructed with funding assistance from the federal government, if the board of directors of the district makes the factual finding that disposing of the properties by lease or sale to the interested municipalities and/or counties under circumstances which will ensure their continued operation as recreational facilities will further the business of the district, proceeding under Section 51-11-13(m) is clearly within the district's authority. Rayner, Nov. 15, 2002, A.G. Op. #02-0653.

§ 51-11-87. Withdrawal of county from district.

ATTORNEY GENERAL OPINIONS

Upon withdrawal of member counties and municipalities of a development district in which are located recreational parks that were constructed with funding assistance from the federal government, if the board of directors of the district makes the factual finding that disposing of the properties by lease or sale to the interested municipalities and/or counties under circumstances which will ensure their continued operation as recreational facilities will further the business of the district, proceeding under Section 51-11-13(m) is clearly within the district's authority. Rayner, Nov. 15, 2002, A.G. Op. #02-0653.

A county may rescind its withdrawal notice from the Pearl River Basin Development District after March 15th of the year in which notice was given but before the beginning of the fiscal year in which it intended to withdraw. Williams, Mar. 14, 2003, A.G. Op. #03-0076.

CHAPTER 13

Tombigbee Valley Authority and Water Management District

Article 3.

Tombigbee River Valley Water Management District.

§ 51-13-101. Legislative determination and declaration of policy.

ATTORNEY GENERAL OPINIONS

State agencies have only such powers expressly granted to them by statute and such powers as are necessarily implied. There is no authority for Tombigbee River Valley Water Management District to financially assist a member county to obtain and pay for engineering studies on a proposed industrial site or to purchase proposed industrial property. Nichols, February 23, 2007, A.G. Op. #07-00044, 2007 Miss. AG LEXIS 29.

§ 51-13-103. General authority to organize.

ATTORNEY GENERAL OPINIONS

State agencies have only such powers expressly granted to them by statute and such powers as are necessarily implied. There is no authority for Tombigbee River Valley Water Management District to financially assist a member county to obtain and pay for engineering studies on a proposed industrial site or to purchase proposed industrial property. Nichols, February 23, 2007, A.G. Op. #07-00044, 2007 Miss. AG LEXIS 29.

§ 51-13-111. Powers of district.

ATTORNEY GENERAL OPINIONS

The Tombigbee River Valley Water Management District may acquire property by first contacting the Secretary of State in accordance with Section 29-1-1(6); if no suitable state-held land is available, then the District may identify suitable property and begin negotiations in compliance with Section 43-37-3. Applewhite, Jan. 10, 2003, A.G. Op. #02-0765.

CHAPTER 15

Pat Harrison Waterway Commission and District

Article 3.

Pat Harrison Waterway District.

Sec.
51-15-105. Board of directors.

§ 51-15-105. Board of directors.

(1) All powers of the district shall be exercised by a board of directors to be composed of the following:

(a) [Repealed]

(b) From and after January 9, 1996, the Governor shall appoint three (3) members of the Board of Directors of the Pat Harrison Waterway District from the district at large. No more than one (1) appointment may be made by the Governor from any one (1) county in the district. All initial appointments made pursuant to this paragraph shall be made no later than February 1, 1996, and no person appointed under this paragraph shall be an elected official or a county employee. All appointments made pursuant to this paragraph shall be for terms of four (4) years each or until a successor is appointed and qualifies.

(c) From and after January 9, 1996, the board of supervisors of each county in the Pat Harrison Waterway District shall have an appointment to the board of directors of the district as follows: the boards of supervisors of the counties of Clarke, Covington and Forrest shall each appoint a member from their respective counties for an initial term of one (1) year; the boards of supervisors of the counties of George, Greene, Jackson and Jasper shall each appoint a member from their respective counties for an initial term of two (2) years; the boards of supervisors of the counties of Jones, Lamar, Lauderdale and Newton shall each appoint a member from their respective counties for an initial term of three (3) years; and the boards of supervisors of the counties of Perry, Smith, Stone and Wayne shall each appoint a member from their respective counties for an initial term of four (4) years. All initial appointments made pursuant to this paragraph shall be made no later than February 1, 1996, and no person appointed under this paragraph shall be an elected official or a county employee. All appointments made pursuant to this paragraph after the initial appointments shall be for terms of four (4) years each or until a successor is appointed and qualifies.

(d) The directors appointed pursuant to paragraphs (b) and (c) of this subsection shall not discontinue any litigation pending on January 9, 1996, with respect to monetary payments owed to the district by any member county, and such directors shall pursue such litigation to a conclusion.

(2) Each director shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before a

chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the clerk and by him preserved.

(3) Each director shall receive a per diem in the amount established in Section 25-3-69, Mississippi Code of 1972, for attending each day's meeting of the board and for each day spent in attending to the necessary business of the district and, in addition, he may receive reimbursement for actual and necessary expenses thus incurred, upon express authorization of the board.

(4) The board of directors shall annually elect from its number a president and a vice president of the district, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer, who may or may not be members of the board, and it may combine those offices. Except as otherwise provided for in this subsection, the treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars ($10,000.00) with sureties qualified to do business in this state, and the premium on such bonds shall be an expense of the district. The condition of each bond shall be that the treasurer or director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the district. In lieu of the bonds required by this subsection, the board may authorize that the district purchase an equivalent amount of errors and omissions insurance for the treasurer and directors.

(5) Each director shall meet with the board of supervisors of the county from which he is appointed at least twice a year at reasonable times established by the board of supervisors.

SOURCES: Codes, 1942, §§ 5956-171, 5956-173; Laws, 1962, ch. 222, §§ 1, 3; Laws, 1995, ch. 559, § 1; Laws, 1996, ch. 465, § 1, eff from and after passage (approved April 2, 1996).

Editor's Note — Paragraph (1)(a) of this section was repealed by its own terms, effective January 8, 1996.

§ 51-15-119. Powers of district.

(1) The Pat Harrison Waterway District through its board of directors is hereby empowered:

(a) To develop in conjunction with the United States Army Corps of Engineers, United States Secretary of Agriculture, or with the head of any other federal or state agency as may be involved, plans for public works of improvement to make navigable or for the prevention of flood water damage, or the conservation, development, recreation, utilization and disposal of water, including the impoundment, diversion, flowage and distribution of

waters for beneficial use as defined in Article 1 of this chapter, and in connection with the Oktibbeha River Basin project as authorized under Public Law 874, 87th Congress, October 23, 1962, and substantially in accordance with the recommendation of the Chief of Engineers in House Document 549 of the 87th Congress.

(b) To impound overflow water and the surface water of any streams in the Pat Harrison Waterway District or its tributaries within the project area, within or without the district, at the place or places and in the amount as may be approved by the Office of Land and Water Resources of the State of Mississippi, by the construction of a dam or dams, reservoir or reservoirs, work or works, plants and any other necessary or useful related facilities contemplated and described as a part of the project within and without the district, to control, store, and preserve these waters, and to use, distribute, and sell them, to construct or otherwise acquire within the project area all works, plants or other facilities necessary or useful to the project for processing the water and transporting it to cities and other facilities necessary or useful to the project for the purpose of processing the water and transporting it to cities and other facilities for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, and is hereby given the power to control open channels for water delivery purposes and water transportation.

(c) To acquire and develop any other available water necessary or useful to the project and to construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(d) To forest and reforest and to aid in the foresting and reforesting of the project area, and to prevent and aid in the prevention of soil erosion and flood within the area; to control, store and preserve within the boundaries of the project area the waters of any streams in the area, for irrigation of lands and for prevention of water pollution.

(e) To acquire by condemnation all property of any kind, real, personal or mixed, or any interest therein, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroad, telephone or telegraph companies and according to the provisions of Section 29-1-1. For the purposes of this article the right of eminent domain of the district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power and other companies or corporations and shall be sufficient to enable the acquisition of county roads, state highways or other public property in the project area, and the acquisition or relocation of this property in the project area. The cost of right-of-way purchases, rerouting and elevating all other county-maintained roads affected by construction shall be borne by the water management district, and new construction shall be of equal quality as in roads existing as of June 1, 1962. The county in which such work is done may assist in these costs if the board of supervisors desires.

The amount and character of interest in land, other property and easements to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making this determination. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area; sand and gravel shall not be considered as minerals within the meaning of this section; and

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting these products by reason of the inclusion of the lands or mineral interests within the project area, whether below or above the water line, but any activities shall be under reasonable regulations by the board of directors that will adequately protect the project; and

(iii) In drilling and developing, these persons are hereby vested with a right to have mineral interests integrated and their lands developed in the drilling unit or units that the State Oil and Gas Board shall establish after due consideration of the rights of all owners to be included in the drilling unit.

Moreover, when any site or plot of land is to be rented, leased or sold to any person, firm or corporation for the purpose of operating recreational facilities thereon for profit, the board shall, by resolution, specify the terms and conditions of the sale, rental or lease, and shall advertise for public bids thereon. When these bids are received, they shall be publicly opened by the board, and the board shall thereupon determine the highest and best bid submitted and shall immediately notify the former owner of the site or plot of the amount, terms and conditions of the highest and best bid. The former owner of the site or plot shall have the exclusive right at his option, for a period of thirty (30) days after written notice is received by the land owner of the determination of the highest and best bid by the board, to rent, lease or purchase the site or plot of land by meeting the highest and best bid and by complying with all terms and conditions of renting, leasing or sale as specified by the board. However, the board shall not in any event rent, lease or sell to any former owner more land than was taken from the former owner for the construction of the project, or one-quarter (¼) mile of shore line, whichever is lesser. If this option is not exercised by the former owner within a period of thirty (30) days, the board shall accept the highest and best bid submitted.

Any bona fide, resident householder actually living or maintaining a residence on land taken by the district by condemnation shall have the right to repurchase his former land from the board of directors for a price not exceeding the price paid for his land, plus any permanent improvements and plus the cost of condemnation.

(f) To require the necessary relocation of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of relocation. Further, the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of roads, highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities, and to convey them to the owners thereof in connection with the relocation as a part of the construction of the project. However, the directors of the district shall not close any public access road to the project existing prior to the construction of the reservoir unless the board of supervisors of the county in which the road is located agrees.

(g) To overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(h) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate all facilities of any kind within the project area necessary or convenient to the project and to the exercise of powers, rights, privileges and functions.

(i) To sue and be sued in its corporate name.

(j) To adopt, use and alter a corporate seal.

(k) To make bylaws for the management and regulation of its affairs.

(*l*) To employ engineers, attorneys, who may or may not be a director, and all necessary agents and employees to properly finance, construct, operate and maintain the projects and the plants, and to pay reasonable compensation for these services; for all services in connection with the issuance of bonds as provided in this article, the attorney's fee shall not exceed one percent (1%) of the principal amount of these bonds. For any other services, only reasonable compensation shall be paid for those services. The board shall have the right to employ a general manager or executive director, who shall, at the discretion of the board, have the power to employ and discharge employees. Without limiting the generality of the foregoing, it may employ fiscal agents or advisors in connection with its financing program and in connection with the issuance of its bonds.

(m) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this article.

(n) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(o) To apply for and accept grants from the United States of America or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to these agencies for grants to construct,

maintain or operate any project or projects which hereafter may be undertaken or contemplated by the district.

(p) To do all other acts or things necessary, requisite, or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by this article or any other law.

(q) To make such contracts in the issuance of bonds that may be necessary to ensure the marketability thereof.

(r) To enter into contracts with municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities or commodities that the project may provide. The district is also authorized to contract with any municipality, corporation or public agency for the rental, leasing, purchase or operation of the water production, water filtration or purification, water supply and distributing facilities of the municipality, corporation or public agency upon consideration as the district and entity may agree. Any contract may be upon any terms and for any time as the parties may agree, and it may provide that it shall continue in effect until bonds specified therein and refunding bonds issued in lieu of these bonds and all obligations are paid. Any contract with any political subdivision shall be binding upon the political subdivisions according to its terms, and the municipalities or other political subdivisions shall have the power to enter into these contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of the municipality or other political subdivisions. These contracts may include within the discretion of the governing authorities a pledge of the full faith and credit of the political subdivisions for the performance thereof.

(s) To fix and collect charges and rates for any services, facilities or commodities furnished by it in connection with the project, and to impose penalties for failure to pay these charges and rates when due.

(t) To operate and maintain within the project area, with the consent of the governing body of any city or town located within the district, any works, plants or facilities of any city deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell or otherwise lawfully dispose of property of any kind, real, personal or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, the board shall advertise the lands for sale to the highest and best bidder for cash, and shall receive and publicly open the bids thereon. The board shall, by resolution, determine the highest and best bid submitted for the land and shall thereupon notify the former owner, his/her heirs or devisees, by registered mail of the land to be sold and the highest and best bid received therefor, and the former owner, or his/her heirs or devisees, shall have the exclusive right at his/her or their

option for a period of thirty (30) days in which to meet such highest and best bid and to purchase such property.

(w) To prevent or aid in the prevention of damage to person or property from the waters of the Pascagoula River or any of its tributaries.

(x) To acquire by purchase, lease, gift or in any other manner (otherwise than by condemnation) and to maintain, use and operate all property of any kind, real, personal or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges and functions conferred upon the district by this article.

(y) In the purchase of or in the entering into of all lease purchase agreements for supplies, equipment, heavy equipment and the like, the directors shall in all instances comply with the provisions of law pertaining to public purchases by public bids on these supplies and equipment.

(z) To designate employees as peace officers with the power to make arrests for violations of regulations of the district. The officers are authorized to carry weapons and to enforce the laws of the state within the confines of district parks and property. Any employee so designated is required to obtain and maintain certification pursuant to Section 45-6-1 et seq.

(aa) To contract with persons, who are certified according to the minimum standards established by the Board on Law Enforcement Officer Standards and Training under Section 45-6-1 et seq., to serve as peace officers with the power to make arrests for violations of regulations of the district. Such officers are authorized to carry weapons and to enforce the laws of the state within the confines of district parks and property. All persons with which the district has contracted under this paragraph (aa) shall be independent contractors and shall not be considered as employees under Chapter 46 of Title 11, Mississippi Code of 1972.

(bb) To: (a) receive and expend funds that are made available to it under the provisions of the federal American Recovery and Reinvestment Act of 2009 (ARRA), and/or from any other source, to construct a lake and related structures and facilities in George County, Mississippi, if the funds received by the district may be used for that purpose; (b) obtain any information and research regarding construction of the lake and related structures and facilities from the Department of Wildlife, Fisheries and Parks; and (c) to receive and expend any funds made available to the district from the Department of Wildlife, Fisheries and Parks for the construction of the lake and related structures and facilities.

(2) The board of directors shall annually prepare a five-year plan containing a prioritized list detailing the purposes, goals and projected costs of projects which it intends to implement or is in the process of implementing and shall file such plans with the clerk of the board of supervisors of each member county on or before July 15 of each year.

(3) The board of directors shall, after completion of the annual audit of the district and upon receipt of the written report thereon, file a copy of such audit with the clerk of the board of supervisors of each member county.

SOURCES: Codes, 1942, § 5956-180; Laws, 1962, ch. 222, § 5; Laws, 1962, 2d Ex. Sess., ch. 31, § 2; Laws, 1993, ch. 615, § 10; Laws, 1995, ch. 559, § 2; Laws, 2002, ch. 515, § 1; Laws, 2010, ch. 553, § 1, eff from and after passage (approved Apr. 28, 2010.)

Amendment Notes — The 2010 amendment added (1)(bb).

Federal Aspects — American Recovery and Reinvestment Act of 2009, 111 P.L. 5, 123 Stat. 115.

§ 51-15-121. Repealed.

Repealed by Laws, 2005, ch. 396, § 4, effective from and after July 1, 2005.

[Codes, 1942, § 5956-181; Laws, 1962, ch. 222, § 6, eff from and after passage (approved June 1, 1962).]

Editor's Note — Former § 51-15-121 required the Pat Harrison Waterway District to advertise for bids on any construction project where the amount of the contract exceeded $2,500.00.

§ 51-15-123. Park and recreation facilities.

The Pat Harrison Waterway District is authorized to establish or otherwise provide for public parks and recreation facilities and for the preservation of fish and wildlife, and to acquire land otherwise than by condemnation except as provided in subsection (e) of Section 51-15-119 for such purposes, within the project area.

SOURCES: Codes, 1942, § 5956-182; Laws, 1962, ch. 222, § 7; Laws, 1995, ch. 559, § 3; Laws, 1998, ch. 368, § 1; Laws, 2010, ch. 553, § 3, eff from and after passage (approved Apr. 28, 2010.)

Amendment Notes — The 2010 amendment deleted (2), which read: "Except as otherwise provided in this subsection (2), from and after July 1, 1999, the district shall not expend on public parks and recreation facilities any monies derived from the payments required from member counties under this article. The district may expend such monies on the repair, replacement and maintenance of public parks and recreation facilities existing on or before January 1, 1998."

§ 51-15-129. District funding.

In each county of the State of Mississippi which is a part of the Pat Harrison Waterway District, so long as funds are found to be necessary for the operation of the district by annual legislative approval of the district budget, the tax collector of such county shall pay into the depository selected by the water district for such purpose an amount to be determined as follows: each county shall pay a pro rata share (not to exceed the avails of one (1) mill through September 30, 1997, and not to exceed the avails of three-fourths (¾) mill through September 30, 2005, and not to exceed seven-eighths (⅞) mill thereafter) of the annual district budget based on the proportion that the most recent total assessed valuation of the county bears to the most recent aggregate total assessed valuation of all the counties which comprise the

district; provided, however, that any county bordering on the Gulf of Mexico which by action of the board of supervisors has created and authorized a port authority and which has been paying into the port authority the avails of a two-mill levy that was established under Section 27-39-3 shall pay an amount not to exceed one-tenth (1/10) mill through September 30, 2005, and not to exceed two-tenths (2/10) mill thereafter, of the total assessed valuation of the county to the Pat Harrison Waterway District pursuant to this section and the assessed valuation of that county shall not be considered when calculating each county's pro rata share of the district's budget. Of the amount paid by counties required to pay to the district an amount not to exceed seven-eighths (7/8) mill, an amount equivalent to the avails of one-eighth (1/8) mill shall be utilized to fund flood control, water management and other similar projects as requested by counties in the district. Of the amount paid by counties required to pay to the district an amount not to exceed two-tenths (2/10) mill, an amount equivalent to the avails of one-tenth (1/10) mill shall be utilized to fund flood control, water management and other similar projects as requested by counties in the district. It shall be the duty of the Pat Harrison Waterway District Board of Directors in the month of November annually upon receipt of the total assessed valuation of the member counties, certified by the Department of Revenue, to prepare a request to the board of supervisors of member counties to levy a tax using the formula herein established not to exceed the maximum number of mills authorized by this section. Member counties shall remit their share of the district budget no later than March 1 of each year.

SOURCES: Codes, 1942, § 5956-185; Laws, 1962, ch. 222, § 10; Laws, 1962, 2d Ex. Sess., ch. 31, § 3; Laws, 2005, ch. 396, § 1; Laws, 2014, ch. 336, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2005 amendment rewrote the section to increase the maximum amount that counties in the Pat Harrison Waterway District may be required to pay for operation of the District.

The 2014 amendment in the next-to-last sentence substituted "November" for "July" and "Department of Revenue" for "Mississippi State Tax Commission" and added the last sentence.

ATTORNEY GENERAL OPINIONS

Each county must pay its full ¾ mill if its pro rata share of the Pat Harrison Waterway District's operating budget is larger than ¾ mill. A county does not have authority to pay less. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

Any given county's payment could increase or decrease as a result of re-assessment, depending on the facts and whether that county's pro rata share of the budget exceeds or is below ¾ of a mill. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

Jackson County must pay its full .1 mill if its pro rata share of the Pat Harrison Waterway District's operating budget is larger than .1 mill. It does not have authority to pay less. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

§ 51-15-131. Board of directors to issue bonds.

The board of directors of the district is hereby authorized and empowered to borrow money or issue bonds of the district for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified herein, including related facilities and including all financing and financial advisory charges, interest during construction, engineering, architectural, legal, and other expenses incidental to and necessary for the foregoing or for the carrying out of any power conferred by this article. The board of directors is authorized and empowered to borrow money and issue bonds at such times and in such amounts as shall be provided for by resolution of the board of directors, not to exceed the limitation prescribed in Section 51-15-135. All such bonds so issued by said district shall be secured solely by a pledge of the net revenues which may now or hereafter come to the district, and by the pledge of the avails of the ad valorem tax levy provided for in Section 51-15-129. Such bonds shall not constitute general obligations of the State of Mississippi or of the counties comprising said district, and such bonds shall not be secured by a pledge of the full faith, credit, and resources of the state or of the counties. Bonds of the district shall not be included in computing any present or future debt limit of any county in the district under any present or future law. "Revenues" as used in this article shall mean all charges, rentals, tolls, rates, gifts, grants, avails of tax levies, monies, and all other funds coming into the possession of the district by virtue of the provisions of this article, except the proceeds from the sale of bonds issued hereunder. "Net revenues" as used in this article shall mean the revenues after payments of costs and expenses of operation and maintenance of the project and related facilities.

SOURCES: Codes, 1942, § 5956-186; Laws, 1962, ch. 222, § 11; Laws, 1962, 2d Ex. Sess., ch. 31, § 4; Laws, 1964, ch. 252; Laws, 2005, ch. 396, § 2, eff from and after July 1, 2005.

Amendment Notes — The 2005 amendment deleted "two mill" preceding "ad valorem tax levy" in the third sentence; and made minor stylistic changes throughout.

§ 51-15-133. Details of bonds; supplemental powers conferred in issuance of bonds.

All bonds provided for by Section 51-15-131 shall be negotiable instruments within the meaning of the Uniform Commercial Code of this state, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, it shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. The bonds shall not bear a greater overall maximum interest rate to maturity

than that allowed in Section 75-17-101. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of directors. No bond shall have a longer maturity than forty (40) years, and the first maturity date thereof shall be not more than five (5) years from the date of such bonds. The denomination, form and place or places of payment of the bonds shall be fixed in the resolution of the board of directors of the district. The bonds shall be signed by the president and the secretary of the board with the seal of the district affixed thereto, but the coupons may bear only the facsimile signatures of the president and secretary. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any bond may be for a period not exceeding one (1) year.

The bonds may be called in, paid and redeemed in inverse numerical order on any interest date prior to maturity, upon not less than thirty (30) days' notice to the paying agent or agents designated in the bonds, and at such premium as may be designated in such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the net revenues of the district, including the avails of the ad valorem tax levy provided for in Section 51-15-129, and that they do not constitute general obligations of the State of Mississippi or of the counties comprising the district, and are not secured by a pledge of the full faith, credit and resources of the state or of the counties.

All the bonds as provided for herein shall be sold for not less than par value plus accrued interest at public sale in the manner provided by Section 31-19-25. No sale shall be at a price so low as to require the payment of interest on the money received therefor at more than eleven percent (11%) per annum computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This article shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-187; Laws, 1962, ch. 222, § 12; Laws, 1962, 2d Ex. Sess., ch. 31, § 5; Laws, 1983, ch. 494, § 20; Laws, 1989, ch. 456, § 2; Laws, 2005, ch. 396, § 3, eff from and after July 1, 2005.

Amendment Notes — The 2005 amendment deleted "two-mill" following "avails of the" in the third paragraph; and made minor stylistic changes throughout.

§ 51-15-137. Repealed.

Repealed by Laws, 2005, ch. 396, § 5, effective from and after July 1, 2005.

[Codes, 1942, § 5956-189; Laws, 1962, ch. 222, § 14; Laws, 1962, 2d Ex. Sess., ch. 31, § 6; Laws, 1964, ch. 253; Laws, 1995, ch. 559, § 5; Laws, 1996, ch. 465, § 4, eff from and after passage (approved April 2, 1996).]

Editor's Note — Former § 51-15-137 required counties in the Pat Harrison Waterway District to pay to the district depository a sum not more than is necessary to defray the annual principal and interest due on outstanding indebtedness of the district.

§ 51-15-163. Renewal of residential lease from district; determination of maximum annual rental; default or breach.

(1) At any time more than fifteen (15) years after the commencement date of any residential lease from the district, the leaseholder shall have the option to renew and extend the lease for a new sixty-year term by giving the district notice of his exercise of this option to renew.

(2) At any time after the first fifteen (15) years of the term of any residential lease, the then present lessee may obtain from the district a new sixty-year lease on the terms and conditions contained in the then current lease form approved for use in residential leases with the exception of rent. Rent under such sixty-year leases will be payable on the same annual payment date as rent under the lease being renewed. The maximum annual rental under the new lease will be determined by the district as follows:

(a) **Renewal of leases with fixed rental (nonescalating).** — The district will recompute the annual rental due under the lease being renewed as if the lease had contained annual rents at the fixed amount stated in the lease for the first ten-year period, escalating thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five-year period. The annual rental which would have been payable as of the renewal date will be the annual rent payable for the first ten-year period of the renewed lease. Annual rental will escalate thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years. Recomputed annual rental will be payable from and after the first day of the renewed lease term and not for the period prior to renewal.

(b) **Renewal of leases with escalating rental.** — Annual rental will remain payable in accordance with the terms of the lease being renewed with rental continuing to escalate at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years during the renewed term.

(3) The district will charge a reasonable nonrefundable fee for preparation of the renewal lease. The lessee will be responsible for obtaining the consent of any mortgage holder to the lease modification.

(4) At any time a lessee is found to be in default or in breach of the terms and conditions contained in the lease, the district shall give thirty (30) days' written notice to such lessee before terminating the lease. Such notice shall be by certified mail and shall specifically state the default or breach. If the lessee

does not cure the default or breach within thirty (30) days of such notice, then the district shall give written notice to the holder of any mortgage or deed of trust on the leasehold and such holder shall thereupon have thirty (30) days to cure the default or breach before the lease is terminated.

SOURCES: Laws, 2014, ch. 423, § 1, eff from and after July 1, 2014.

§ 51-15-165. Renewal of commercial property lease from district; appraisal establishing fair market rental value required.

(1) Any holder of a lease that is not a residential lease subject to Section 51-15-163 shall have the right, exclusive of all other persons, to renew the lease at fair market rental value at any time prior to expiration of the lease.

(2) Other than the right of a lessee to renew at fair market rental value, nothing in this section is intended to limit or restrict the right of the district to negotiate terms of any lease in furtherance of any of the purposes authorized by this section and in a manner deemed favorable to the district by the board of directors.

(3)(a) Prior to entering into any lease under this section, whether a new or renewal lease, the district shall obtain at least one (1) appraisal from a competent appraiser establishing the fair market rental value of the land, exclusive of improvements made by the leaseholder or any predecessor in title, and, except as otherwise provided in paragraph (b) of this subsection, the land shall not be leased for an amount less than the fair market rental as determined by the appraiser and approved by the board. The district may require such other terms as it deems advisable. The cost of the appraisal shall be paid by the district and may be included in the costs of lease renewal to be reimbursed by the lessee.

(b) The lessee may obtain an appraisal from a certified real estate appraiser establishing the fair market rental value of the land. If the fair market rental value of the land established in such appraisal differs from the fair market rental value of the land established in the appraisal obtained by the district, the land shall not be leased for an amount less than the average of the fair market rental value established by the two (2) appraisals.

(4) For the purposes of this section, "terms" means rent, rent escalation clauses, rental adjustment periods and method of determination, term of years, permitted use, condition of improvements, removal of improvements, and compliance with district rules and regulations.

(5) In the event a lessee has not obtained a new lease pursuant to the provisions of this section, any preemptive right of the lessee to lease the property shall be extinguished upon expiration of the lease, and, at the direction of the district, the lessee shall remove all improvements and other structures on the property immediately upon termination of the lease.

SOURCES: Laws, 2014, ch. 423, § 2, eff from and after July 1, 2014.

CHAPTER 29

Drainage Districts with Local Commissioners

SEC.

§ 51-29-1. Scope of chapter.

ATTORNEY GENERAL OPINIONS

A county can perform drainage work on a ditch or creek or the banks thereof only to the extent necessary to drain water from an adjacent county road or to protect such a road, county building and other county property. Meadows, Aug. 22, 2003, A.G. Op. 03-0410.

A county does not have the authority to engage in a general program of flood control projects except as authorized in statutes setting forth specific provision for local flood control and drainage. Holmes-Hines, Aug. 22, 2003, A.G. Op. 03-0422.

§ 51-29-37. Employment of counsel.

ATTORNEY GENERAL OPINIONS

The chancery judge or chancellor must only approve the compensation of the attorney, and is not responsible for approving a drainage district's choice of a particular attorney. Chamberlin, Sept. 17, 2004, A.G. Op. 04-0454.

Any reasonable type of billing method, including a monthly, quarterly or annual billing method would be permissible under the statute. Chamberlin, Sept. 17, 2004, A.G. Op. 04-0454.

§ 51-29-39. Appraisement by commissioners as alternate method to acquire land and damage compensation.

JUDICIAL DECISIONS

1. In general.

Water management district failed to follow the clear procedures outlined in Miss. Code Ann. § 51-29-39 where it did not provide notice to the life tenants or remaindermen of a piece of property on which the district wanted to acquire a permanent easement on which to construct a water-retarding structure, and where the life tenants were not made a party to the petition to require the easement. Webb v. Town Creek Master Water Mgmt. Dist., 903 So. 2d 701 (Miss. 2005), remanded by 93 So. 3d 20, 2012 Miss. LEXIS 355 (Miss. 2012).

§ 51-29-59. Construction contracts.

(1) The board of commissioners herein mentioned shall have control of the construction of the improvements in their districts. They may make purchases and contracts in accordance with Section 31-7-13.

(2) The chancery court or chancellor in vacation may remove any commissioner and appoint his successor, upon proof of incompetency or neglect of duty; but the charge shall be in writing, and such commissioner shall have the right to be heard in his defense and to appeal to the circuit court.

SOURCES: Codes, Hemingway's 1917, § 4457; 1930, § 4476; 1942, § 4702; Laws, 1912, ch. 195; Laws, 1970, ch. 273, § 1; Laws, 2004, ch. 401, § 1, eff from and after passage (approved Apr. 22, 2004.)

Amendment Notes — The 2004 amendment rewrote the section to revise drainage district construction contract requirements to conform to state purchasing law requirements.

§ 51-29-97. Financial statement and audit.

Within sixty (60) days after the end of the fiscal year following the organization of said drainage district, and annually thereafter, the commissioners shall prepare and retain a copy of a sworn statement of the financial condition of the district to cover the preceding fiscal year. The report shall contain, among other things, a statement of the cash on hand the first of the year for which the report is made, together with all other assets of the district; the total receipts of the preceding year; the disbursement for administration, for construction, for maintenance, for bonds redeemed, and for interest due on outstanding bonds, together with all other indebtedness of the district. The commissioners are further authorized and empowered to do any and all things incident to the management and affairs and business of the district.

The State Auditor of Public Accounts or his assistant may annually audit the books, financial report and expenditures of the commission in the same manner that such officer audits other boards and commissions; and the same powers and duties which such officer exercises or enjoys with respect to other boards and commissions shall be exercised and performed in the same manner in his audit of drainage district commissions. A fee of not exceeding Thirty Dollars ($30.00) per man hour for the time required to conduct each audit shall be paid by each drainage district audited under this section. All such fees shall be paid into the State Department of Audit Fund. Upon the recommendation of the Director of the State Department of Audit, the State Auditor shall appoint auditors on a temporary or permanent status to perform drainage district audits. The State Auditor shall not audit dormant districts which have no income or disbursements during any year.

SOURCES: Codes, Hemingway's 1917, § 4476; 1930, § 4497; 1942, § 4723; Laws, 1912, ch. 195; Laws, 1958, ch. 459; Laws, 1964, ch. 211, § 1; Laws, 1985, ch. 455, § 10; Laws, 2008, ch. 558, § 3, eff from and after July 1, 2008.

Amendment Notes — The 2008 amendment substituted "prepare and retain a copy of" for "file with the clerk of the board of supervisors and the State Auditor of Public Accounts" in the first sentence of the first paragraph; and substituted "Thirty Dollars ($30.00) per man hour" for "One Hundred Dollars ($100.00) per day" in the second paragraph.

CHAPTER 31

Drainage Districts with County Commissioners

SEC.
51-31-11. Oath and bond of drainage commissioners.

§ 51-31-11. Oath and bond of drainage commissioners.

Each person selected county drainage commissioner shall, before entering upon the discharge of the duties of the office, give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00). Such commissioner shall take and subscribe to an oath of office before said clerk that he will faithfully discharge the duties of the office, which oath shall also be filed with the said clerk.

SOURCES: Codes, 1906, § 1682; Hemingway's 1917, § 4261; 1930, § 4373; 1942, § 4578; Laws, 1986, ch. 458, § 40; Laws, 2009, ch. 467, § 18, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "not less than Fifty Thousand Dollars ($50,000.00)" for "equal to Ten Thousand Dollars ($10,000.00)" at the end of the first sentence.

CHAPTER 33

Provisions Common to Drainage Districts and Swamp Land Districts

ARTICLE 1.

PROVISIONS COMMON TO DRAINAGE DISTRICTS.

SEC.
51-33-127. Procedures for transfer of drainage district attributes to county soil and water conservation district; dissolution of drainage district; continuation of maintenance and operation of existing structures.

§ 51-33-1. Soil and water conservation and utilization.

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act,

Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 51-33-127. Procedures for transfer of drainage district attributes to county soil and water conservation district; dissolution of drainage district; continuation of maintenance and operation of existing structures.

(1) A drainage district may be dissolved and its powers, duties and responsibilities transferred to the county soil and water conservation district by:

(a) The commissioners of the drainage district determining and spreading on the district's minutes that it is in the best interest of the residents and landowners of the drainage district that the district be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. In any drainage district in which there are not any active drainage district commissioners, or in which the drainage district has ceased to function, the county soil and water conservation district commissioners and the county board of supervisors may begin the dissolution and transfer. If the dissolution of the drainage district and transfer of powers occurs without a resolution from the drainage district commissioners, the chancery court, in its proceedings under subsection (1)(e), must determine and state that there is not an active drainage district or there are not any drainage district commissioners, or both.

(b) The commissioners of the county soil and water conservation district determining, and spreading on the district's minutes, that it is in the best interest of the residents and landowners of the drainage district that the drainage district be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. Then, the county soil and water conservation district must decide if it is willing to accept those powers, duties and responsibilities.

(c) The county board of supervisors agreeing, and spreading on the county's minutes, that the drainage district should be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. If the county supervisors agree to transfer the drainage district to the county soil and water conservation district, they must register their support by one (1) of the following methods of funding the operation and maintenance of the existing water impoundment structures:

(i) Continuation of existing ad valorem tax assessments on benefited or affected acres with the ad valorem taxes being used by the county soil and water conservation district solely for the operation and maintenance of existing water impoundment structures transferred from the drainage district.

(ii) If there has not been an ad valorem tax assessment or if the assessment has expired, the establishment of ad valorem tax assessments on benefited or affected acres and collection of the ad valorem taxes solely

for the operation and maintenance of the existing water impoundment structures transferred from the drainage district. The ad valorem assessment and collection of taxes shall comply with the procedures authorized in Sections 51-29-45 through 51-29-57.

(iii) If there has not been an ad valorem tax assessment or if it has expired, the county board of supervisors may agree to provide funds, through county appropriation, to the county soil and water conservation district for the operation and maintenance of the transferred water impoundment structures.

(d) Upon completion of the requirements of subsection (1)(a) through (c), the commissioners of the drainage district or the commissioners of the county soil and water conservation district, or both, shall petition the chancery court of the county in which the drainage district was originally established for the dissolution of the drainage district and the transference of its powers, duties and responsibilities to the soil and water conservation district. The petition must be accompanied by copies of the minutes reflecting the actions of the drainage district, the soil and water conservation district and the county board of supervisors. After the petition is filed, it shall be the duty of the clerk of the court to give notice of the filing by publishing the notice in a newspaper published in the county for three (3) consecutive weeks or by publishing the notice in a newspaper published in the counties in which the lands of the drainage district lie. The notice shall be addressed to all persons interested in the drainage district and shall require them to appear before the chancery court at a place within the district of the chancery court on a day certain but not earlier than twenty (20) days or more than sixty (60) days after the date of the first publication of the notice, and show cause, if any, of why the petition should not be granted.

(e) On the date set by the court, the chancellor shall review the petition, minutes of the respective districts and board of supervisors, and any other evidence or testimony the court finds necessary, and if the court determines:

(i) Subsection (1)(a) through (c) of this section has been complied with; and

(ii) It is in the best interest of the landowners and residents of the drainage district to dissolve the drainage district and transfer the drainage district's powers, duties and responsibilities to the county soil and water conservation district, the court shall enter its order:

1. Dissolving the drainage district.

2. Transferring all the powers, duties and responsibilities of the drainage district to the county soil and water conservation district.

3. Provide funding for the future operation and maintenance of the existing water impoundment structures by either:

a. Transferring existing authority to assess benefited or affected acres for ad valorem taxation;

b. Authorizing the county soil and water conservation district to assess ad valorem taxes on benefited or affected acres in the manner

authorized for drainage districts in Sections 51-29-45 through 51-29-57; or

c. Recognizing that the county board of supervisors will determine and provide funding amounts for the operation and maintenance of the water impoundment structures by the county soil and water conservation district.

4. Transferring all assets of the drainage district, real or personal, or both, and any other assets, wherever they are situated, to the county soil and water conservation district.

(2) If a drainage district's boundaries cross county lines:

(a) Subsection (1)(b) and (c) must be completed by the county soil and water conservation district and the county board of supervisors for each county in which the drainage district has existing water impoundment structures constructed with financing from the United States under Public Law 534 or Public Law 566, 83rd Congress of the United States; and

(b) The chancery court's division of powers, duties and responsibilities, together with the funding responsibilities for operation and maintenance of existing structures, shall be in accordance with the agreement of all county soil and water conservation districts and county board of supervisors within whose boundaries the drainage district's structures lie.

SOURCES: Laws, 2001, ch. 474, § 2, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the paragraph (d) of subsection (1). The word "ad dressed" was changed to "addressed" in the last sentence. The Joint Committee ratified the correction at its July 8, 2004, meeting.

ARTICLE 3.

PROVISIONS COMMON TO SWAMP LAND DISTRICTS.

SEC.
51-33-201. Appointment of commissioners; bond.

§ 51-33-201. Appointment of commissioners; bond.

Swampland districts heretofore organized under the provisions of Sections 371 through 391, inclusive, of the Code of 1906 and amendments thereto shall continue to operate under the provisions of said laws, and the adoption of this Code of 1972 shall not be held to repeal such laws insofar as any of such districts are concerned. However, no districts shall hereafter be organized under said laws.

In all cases where there are no commissioners of such a swampland district now in office, the board of supervisors of the county in which a swampland district is located shall have the power and authority to appoint three (3) commissioners for such swampland district, whose term of office shall be for a period of four (4) years from the date of such appointment. In the event

a vacancy in the office of any such commissioner shall result from death, resignation or any other cause, such vacancy shall be filled by the board of supervisors by appointment for the unexpired term; and upon the expiration of the term of office of any commissioner appointed hereunder, the board of supervisors shall appoint his successor for a like term of four (4) years. All commissioners appointed under the provisions of this article shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00).

SOURCES: Codes, 1930, § 4528; 1942, § 4757; Laws, 1950, ch. 469, § 1; Laws, 1986, ch. 458, § 41; Laws, 2009, ch. 467, § 19, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "not less than Fifty Thousand Dollars ($50,000.00)" for "equal to Ten Thousand Dollars ($10,000.00)" at the end of the last sentence in the second paragraph.

CHAPTER 35

Flood Control

Article 5.

Urban Flood Control.

Sec.

§ 51-35-305. General authority to organize.

Flood and drainage control districts may now or hereafter be organized in this state under the provisions of this article, in the manner hereinafter provided, whenever any part of such district lies wholly or partially in or adjacent to any part of a municipality having a population of ten thousand (10,000) or more inhabitants at the time of the filing of the petition to create such district. For the purposes of determining population of any municipality, the last completed census prior to the filing of such petition shall be presumed to be the population of such municipality at the time of the filing of such petition. Each flood and drainage control district shall be an agency of the state and a body politic and corporate, and may be composed of one or more entire municipalities or a part or parts thereof, one or more entire counties or a part or parts thereof, or any combination of counties and municipalities or a part or parts thereof.

SOURCES: Codes, 1942, § 3665-03; Laws, 1962, ch. 226, § 3; Laws, 1999, ch. 510, § 3; Laws, 2001, ch. 568, § 1; Laws, 2006, ch. 337, § 1; Laws, 2008, ch. 311, § 1, eff from and after passage (approved Mar. 17, 2008.)

Amendment Notes — The 2006 amendment extended the date of the repealer in (2) from "July 1, 2006" until "July 1, 2008."

The 2008 amendment deleted former (2), which contained a repealer for the section.

§ 51-35-307. Petition for creation of district.

Any municipality which may be, in whole or in part, a part of a proposed flood and drainage control district organized under the terms of this article, and when authorized by a resolution of a majority of its governing authorities, may petition the chancery court of the county in which the proposed district is located, or the chancery court of either county in which lands to be included in the proposed district are located if the lands to be included in the proposed district are located in two or more counties, to organize and establish a flood and drainage control district and shall set forth in the petition:

(a) The proposed name of the district and the areas to be included in the district, the areas to be that area directly or indirectly benefited by or protected from overflow or flood waters by the contemplated flood or drainage control improvements and any area which is necessary to be included in the district to carry out the purposes of this article. Any municipality or any part thereof, or any county or any part thereof, which is subject to overflow or flood from waters of any river or its tributaries, or which benefits from improvements, may be included in the district.

(b) The fact that a preliminary report or study to determine the engineering feasibility of constructing flood or drainage control improvements along any river or its tributaries has been made by a competent engineer or engineering firm, or any other competent institution or agency, and that such study or report shows that the construction of such facilities is feasible for flood and drainage control or for any of the other purposes or services contemplated by the legislative declaration of public policy in this article.

(c) The necessity and desirability for the construction of such facilities.

(d) A general description of the purposes of the contemplated works, a general description of the plan including the lands to be protected by said flood or drainage control improvements or otherwise affected thereby, and maps or plats showing the general location of any flood and drainage control improvements and related facilities. The word "project" when used herein shall mean the general plan and purposes of the flood and drainage control improvements and associated development, as set out in this petition to the chancery court, and the words "project area" shall mean the physical location of any levees, channels, drains, or related facilities and associated development, and those areas which are necessary to be included in the district to carry out the purposes of this article, and the area of the district as shown on the plats filed with the chancery court. The words "related facilities" as

used in this article shall mean any facilities which are correlated with or used in connection with the project.

The petition shall be filed with as many copies as there are parties defendant. A copy of the preliminary report or study shall be attached to the original petition as an exhibit.

It shall not be necessary that any landowners in the counties to be included in said proposed district be named in the petition or made parties defendant. The chancellor of the chancery court in which said petition shall be filed shall have jurisdiction of the entire flood control district and project area for the purposes of this article. Such jurisdiction may be exercised by the chancellor in termtime or in vacation, as provided in this article.

In the event any part of the proposed flood and drainage control district lies outside the limits of the municipality filing the petition, the county or counties in which lie said lands outside said municipality shall be made a defendant to the petition by service on the clerk of the board of supervisors; however, should said county or counties join in said petition pursuant to a resolution of a majority of the members of the board of supervisors thereof, it shall not be necessary to make said county or counties a defendant to said petition.

In the event any part of said proposed flood and drainage control district lies within any municipality other than said municipality petitioning for the creation of said district, said municipality or municipalities not joining in said petition shall be made a defendant to said petition by service of process on the clerk of said municipality; however, should said municipality join in said petition pursuant to a resolution of a majority of the governing authorities thereof, it shall not be necessary to make said municipality a defendant to said petition.

SOURCES: Codes, 1942, § 3665-04; Laws, 1962, ch. 226, § 4; Laws, 2013, ch. 436, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment, in (a), inserted "directly or indirectly" in the first sentence, and "or which benefits from improvements" in the last sentence; in (d), inserted "and associated development" preceding "as set out in this petition" and substituted "and associated development, and those areas which are" for "the area which is" in the second sentence; and made minor stylistic changes.

§ 51-35-315. Powers of district.

The said district through its board of directors is hereby empowered:

(a) To impound, divert, change, alter, or otherwise control overflow water and the surface water of any river or its tributaries within the project area within or without such district at such place or places and in such amount by the diversion of rivers or their tributaries, by the construction of a dam or dams, a levee or levees, a channel or channels, reservoir or reservoirs, works, pumps, plants, and any other necessary or useful related facilities contemplated or described as a part of the project within or without the district. The district is also empowered to construct or otherwise acquire

within the project area all works, plants, or other facilities necessary or useful to the project for the purpose of carrying out the provisions of this article.

(b) To cooperate with the United States of America in the construction of flood and drainage control improvements, for the protection of property, controlling floods, reclaiming overflow lands, and preventing overflows in this state; and for the purpose of operating and maintaining dams, reservoirs, channels, levees, pumps, and other flood control works and improvements which may be constructed by the United States of America or any department or agency thereof.

(c) When said project, or any part thereof, is to be constructed by the United States of America or any agency or department thereof, to furnish, without cost to the United States of America, all lands, easements, and rights-of-way necessary for the construction of the project or any part thereof; to hold and save the United States free from damages due to said construction; to make, without cost to the United States, any changes, alterations, or relocation of any public utilities, roads, highways, bridges, buildings, or local betterment made necessary by the work; to provide assurances to the United States of America that encroachment on the levees, improved channels, and pond areas will not be permitted; to maintain and operate the improvements after completion thereof in accordance with regulations prescribed by the United States of America or any agency or department thereof; to contribute in cash to the United States of America, or any agency or department thereof, such sums of money as shall be required by the United States of America, or any agency or department thereof, as a condition for the construction of any improvements by the United States or any agency or department thereof; and generally, without being limited by any of the above, to carry out and faithfully perform any obligations cast upon the district as a condition to the construction of any flood control work, project, or improvements by the United States of America, or any agency or department thereof, and to give assurances to the United States of America that the district will so do.

(d) To construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(e) To prevent or aid in the prevention of damage to person or property from the waters of any river or any of its tributaries.

(f) To acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges, and functions conferred upon the district by this article.

(g) To acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges, and functions conferred upon the

district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone, or telegraph companies. For the purposes of carrying out this article, the right of eminent domain of such district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power, and other companies or corporations, and shall be sufficient to enable the acquisition of county roads, state highways, or other public property in the project area, and the acquisition, or relocation, of the above-mentioned utility property in the project area.

The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors; and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However,

1. In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area, sand and gravel not being considered as minerals within the meaning of this section; and

2. No person or persons owning the mining rights, drilling rights, or the right to share in production shall be prevented from exploring, developing, or producing oil or gas with necessary rights-of-way for ingress, egress, pipelines, and other means of transporting such products by reason of the inclusion of such lands or mineral interests within the project area, whether below or above the waterline, but any such activities shall be under such reasonable regulations and limitations by the board of directors as will adequately protect and reduce the impacts to the project; and

3. In drilling and developing, such persons are hereby vested with a special right to have such mineral interest integrated and their lands developed in such drilling unit or units as the State Oil and Gas Board shall establish after due consideration of the rights of all of the owners to be included in the drilling unit.

(h) To require the necessary relocation of bridges, roads, and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with such owners regarding the payment of the cost of such relocation. It is further provided that the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of such road, highway, railroad, telephone, and telegraph lines and properties, electrical power lines, gas pipelines and mains and facilities, and to convey the same to the owners thereof in connection with such relocation as a part of the construction of the project.

(i) To overflow and inundate any public lands and public and private property, including sixteenth section lands and in-lieu lands, within the project area.

(j) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate any and all facilities of any kind within the project area necessary or convenient to the project and to the exercise of such powers, rights, privileges, and functions.

(k) To sue and to be sued in its corporate name and shall be considered a political subdivision pursuant to Section 11-46-1.

(*l*) To adopt, use, and alter a corporate seal.

(m) To make bylaws for the management and regulation of its affairs.

(n) To employ engineers, attorneys, fiscal agents, advisors, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and facilities of the district and carry out the provisions of this article, and to pay reasonable compensation for such services.

(o) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this article.

(p) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(q) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to such agencies for grants to construct, maintain, or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(r) To do any and all other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by this article or any other act of law.

(s) To make such contracts in the issuance of bonds as may be necessary to insure the marketability thereof.

(t) To operate and maintain within the project area, with the consent of the governing body of any city, town or county located within the district, any works, plants, or facilities of any such city, town, or county deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell, or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) To make such changes in location of levees, channels, drains, or related facilities, or other changes, alterations, or modifications in the plan filed with the petition creating the district, which may be necessary for the accomplishment of the general purposes of the district.

(w) In the event the board of directors of the district determines that it would meet a public necessity and would be conducive to the public welfare

to vary, alter, enlarge, diminish, or otherwise change the areas included in the district for the purpose of carrying out any of the purposes contemplated by this article, the board of directors of the district may at any time file a petition in the chancery court of the county having jurisdiction of the district, setting forth the reasons for said change in said area, and the chancery court or the chancellor in vacation shall have the power and jurisdiction to vary, alter, enlarge, diminish, or otherwise change said area included in the district under the procedure set forth in Sections 51-35-309 through 51-35-313. However, such action by the chancery court or the chancellor in vacation shall not affect or impair any financial obligations of said district as they existed prior to such action, nor shall any liens or rights of any bondholders upon the lands included in the district be impaired by such action.

(x) All equipment, supplies, heavy equipment, contracts on lease-purchase agreements, and office supplies shall be purchased pursuant to state purchasing law.

SOURCES: Codes, 1942, 3665-09; Laws, 1962, ch. 226, § 9; Laws, 2013, ch. 436, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment deleted "as may be approved by the Board of Water Commissioners of the State of Mississippi" preceding "by the diversion of rivers" in the first sentence in (a); in (g)1, inserted "not" preceding "being considered"; in (g)2, deleted "sand, gravel" preceding "oil or gas with necessary" and inserted "and limitations" and "and reduce the impacts to"; inserted "and private" in (i); added "and shall be considered a political subdivision pursuant to Section 11-46-1" to the end of (k); substituted "shall be purchased pursuant to state purchasing law" for "in excess of two hundred dollars ($200.00) shall be by bid as set forth in the provisions of law pertaining to public purchases" at the end of (x); and made minor stylistic changes.

§ 51-35-317. Board of directors.

All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) In the event the proposed flood and drainage control district lies wholly within the limits of one (1) municipality, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors.

(b) In the event the proposed flood and drainage control district is comprised of lands lying partly in a municipality and partly outside the limits of a municipality but wholly in one (1) county, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors. However, should the assessed valuation of land and property and improvements in said district outside the municipality, according to the last preceding tax assessment roll for county and state taxes, exceed said assessment for the land and property and improvements of the district lying within the municipality, the board of supervisors of the county in which said

district lies shall appoint three (3) directors and said municipality shall appoint two (2) directors.

(c) In the event the proposed flood and drainage control district is comprised of lands lying, in whole or in part, in one or more municipalities which are in existence at the time of the creation of such district, and in one or more counties and not falling within the description of (a) or (b) above, each such municipality shall appoint one (1) director and the board of supervisors of each county in which part of the lands of the proposed district lie shall appoint one (1) director. In the event there are one or more new municipalities incorporated within the district after the organization of such district, each such municipality shall be given a director of the district. However, in the event that selection of directors in said manner results in an even number of directors, the Governor of the State of Mississippi shall appoint one (1) additional director who is a member of the State Fair Commission so that there shall be an odd number of directors.

(d) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(e) Each director shall receive a fee not to exceed such amount as set forth in Section 25-3-69 for attending each meeting of the board and for each day actually spent in attending to the necessary business of the district and shall receive reimbursement for actual expenses thus incurred upon express authorization of the board.

(f) The board of directors shall annually elect from its number a president and a vice president of the district and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all the duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00), as set by the board of directors, and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), and the premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of the office and account for all money which shall come into his custody as treasurer or director of the district.

(g) In the event a county or municipality entitled to appoint a director or directors to the district shall not do so within twenty (20) days from the date of the order of the chancery court creating the district, the chancery court or the chancellor in vacation shall forthwith exercise the right of said county or municipality in appointing a director or directors.

(h) Each director shall hold office for a period of four (4) years from the date of his appointment. However, in order to insure continuity of experience among the members of the board of directors in any district created after the effective date of this act, one (1) member of the initial board of directors shall hold office for only one (1) year, one (1) member shall hold office for only two (2) years, and one (1) member shall hold office for only three (3) years, and, at the initial meeting of the board of directors, they shall determine by lot which of their members shall serve for only one (1), two (2), or three (3) years.

(i) No person shall be disqualified from serving as a member of the board of directors by virtue of his having previously served as a director, by virtue of his holding any other office, political or otherwise, or by virtue of his not residing in or owning lands in said district.

SOURCES: Codes, 1942, § 3665-10; Laws, 1962, ch. 226, § 10; Laws, 1981, ch. 444, § 1; Laws, 2013, ch. 436, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment deleted the former last sentence of (c), which read: "Each director appointed pursuant to the provisions of this section, except the director appointed by the Governor, shall be either a resident or property owner in the district for which he is appointed"; in (h), substituted "one (1), two (2), or three (3)" for "one (1), two (2), and three (3)" at the end; and made minor stylistic changes.

§ 51-35-319. Construction contracts.

All construction contracts of the district, which shall be let solely by the district shall comply with state purchasing and bid laws and the board of directors of the district shall award the contract pursuant to state purchasing and bid laws. The contractor will comply with the terms imposed by such board and enter into bond with sufficient sureties, to be approved by the board, in such penalty as shall be fixed by such board, but in no case to be less than the contract price, conditioned for the prompt, proper, and efficient performance of the contract.

SOURCES: Codes, 1942, § 3665-11; Laws, 1962, ch. 226, § 11; Laws, 2013, ch. 436, § 4, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment substituted "shall comply with the state purchasing and bid laws and" for "where the amount of the contract shall exceed Two Thousand Five Hundred Dollars ($2,500.00), shall be made upon at least three (3) weeks public notice by advertisement in a newspaper of general circulation in the district, which notice shall state the thing to be done and invite sealed proposals to be filed with the secretary of the district to do the work. In all such cases, before the notice shall be published, the plans and specifications for the work shall be filed with the secretary of the district, and there remain"; and substituted "pursuant to state purchasing and bid laws. The contractor" for "to the lowest bidder, who" at the end of the first sentence and beginning of the last sentence.

§ 51-35-325. Declaration of intent to issue revenue bonds; contents and publication of resolution; protest; election on question of issuance of bonds.

Before issuing any revenue bonds hereunder, the board of directors of the district shall adopt a resolution declaring its intention to so issue, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the date upon which the governing body proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such district, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in the district, and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in the district. If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors living or owning property in the district shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as herein provided. If no such protest be filed, then such bonds may be issued without an election at any time within a period of two (2) years after the date specified in the above-mentioned resolution. However, the board of directors of the district, in its discretion, may nevertheless call an election on the question of the issuance of the bonds, in which event it shall not be necessary to publish the resolution declaring its intention to issue bonds as herein provided.

SOURCES: Codes, 1942, § 3665-14; Laws, 1962, ch. 226, § 14; Laws, 2013, ch. 436, § 5, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment rewrote the section which read: "Before issuing bonds for any of the purposes herein authorized, the board of directors of the district shall declare its intention to issue such bonds by resolution spread upon its minutes, fixing in such resolution the maximum amount thereof, the purpose for which they are to be issued, the date upon which an election shall be held in such district, and the place or places at which such election shall be held. A certified copy of such resolution shall be furnished to the county election commissioners of each county having lands lying in such district, and the county election commissioners shall thereupon conduct such elections. Notice of such election shall be signed by the secretary of the board of directors of said district and shall be published once a week for at least three consecutive weeks in at least one newspaper published in each county in which any part of the district lies, and in each municipality lying within the district. The first publication of such notice shall be made not less than twenty one days prior to the date fixed for such election, and the last publication shall be made not more than seven days prior to such date. If no newspaper is published in any municipality, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such municipality and published in the same

or an adjoining county and, in addition, by posting a copy of such notice for at least twenty one days next preceding such election in at least three public places in such municipality."

CHAPTER 37

Watershed Districts

WATERSHED REPAIR AND REHABILITATION COST-SHARE PROGRAM

§ 51-37-3. Watershed Repair and Rehabilitation Cost-Share Program.

(1) There is created the Mississippi Watershed Repair and Rehabilitation Cost-Share Program to be administered by the Mississippi Soil and Water Conservation Commission ("commission") through the Soil and Water Cost-Share Program for the purpose of assisting local watershed districts in the repair, rehabilitation or removal of water impoundment structures constructed with financing from the United States of America under Public Law 534 and Public Law 566. For the purposes of this section, the term "watershed district" shall include any "watershed district, soil and water conservation district, drainage district, flood control district, or water management district authorized by the Mississippi Legislature which has the management responsibility for any Public Law 534 or Public Law 566 water impoundment structure."

(2) The Legislature may appropriate such sums as it may deem necessary to a special fund for the commission to be expended by them in accordance with this section. The commission is authorized to receive and expend any funds appropriated by the federal government for the purposes of this section. The commission is authorized to receive and expend proceeds from bonds issued under Sections 1 through 14 of House Bill No. 1783, 1998 Regular Session, Section 1 of Chapter 502, Laws of 2008, and Section 17 of Chapter 530, Laws of 2014. Unexpended amounts remaining at the end of the fiscal year shall not lapse into the State General Fund.

(3) The commission shall:

(a) Establish rules and regulations for participation and assistance under this cost-share program consistent with the requirements of this section.

(b) Establish a priority list of the watershed structures for which cost-share assistance has been applied.

(c) Determine which structures shall be eligible for cost-share assistance.

(d) Establish maximum sums and cost-share rates which any eligible entity may receive for implementation of the cost-share assistance.

(e) Award cost-share assistance in accordance with the rules and regulations. The awarding of cost-share assistance may be in the form of direct payment to the watershed district or may be in the form of the commission's directly managing the repair, renovation or removal as agreed between the commission and the watershed district.

(4) Any watershed district must meet the following minimum criteria to be eligible for consideration for approval of cost-share assistance under this program:

(a) The water impoundment structure has been certified not to meet the technical standards established by the United States Department of Agriculture, Natural Resources Conservation Service, as a result of needed maintenance, structural defect, equipment failure or public access.

(b) A maintenance agreement has been reached with either the watershed district or the landowner upon which the structure is situated. Any impoundment structure where the watershed district is the maintainer shall have a new maintenance agreement which includes the concurrence and approval of the county board of supervisors or city governmental authority as guarantor of the performance of the watershed district.

(c) The local watershed district, county board of supervisors or landowner upon whose land the structure is located must agree to provide financial or in-kind match at the rate established by the commission.

(5) The impoundment structure may be situated on land owned by a private landowner or any state or federal governmental entity.

(6) Any county board of supervisors or municipal governmental authority, within whose boundaries a qualifying impoundment structure lies, wishing to participate in this program shall have the authority to expend public monies, personnel, and/or equipment on private property to repair, renovate or remove any impoundment structure authorized by the commission for participation in this program.

(7) This section is supplemental to any powers and authorities granted watershed districts, county boards of supervisors, or municipal governmental authorities and does not supersede existing law

SOURCES: Laws, 1997, ch. 477, § 2; Laws, 2008, ch. 502, § 2; Laws, 2014, ch. 530, § 18, eff from and after July 1, 2014.

Editor's Note — There is a typographical error in this section. The period is missing from the end of subsection (7). The section is set out as amended by Section 18 of Chapter 530, Laws of 2014.

Laws of 2014, ch. 530, § 47 provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2008 amendment added "and Section 1 of Chapter 502, Laws of 2008" at the end of the next-to-last sentence of (2).

The 2014 amendment deleted "and" preceding "Section 1 of Chapter 502" and added "and Section 17 of Chapter 530, Laws of 2014" in the second to last sentence in (2).

CHAPTER 39

Storm Water Management Districts

§ 51-39-1. Short title.

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

CHAPTER 41

Public Water Authorities

SEC.
51-41-1. Legislative intent.

§ 51-41-1. Legislative intent.

It is the intent of the Legislature to provide a means, in addition to the incorporation of districts authorized in Sections 19-5-151 through 19-5-207, by which not-for-profit corporations or associations involved in the sale, transmission and distribution of potable water to members of the public and others may convert their entity status from that of a body corporate to that of a body politic, thereby allowing those entities the opportunity to access the tax-exempt capital markets and thereby assuring the State of Mississippi and the customers of those entities of adequate supplies of water at the lowest water rates possible.

SOURCES: Laws, 2003, ch. 512, § 1, eff from and after July 1, 2003.

Editor's Note — This section was set out to correct an error in the 2003 replacement volume.

TITLE 53

OIL, GAS, AND OTHER MINERALS

CHAPTER 1

State Oil and Gas Board

IN GENERAL

§ 53-1-3. Definitions.

JUDICIAL DECISIONS

1. In general.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Contamination complained of by the landowners was deposited on their property in the course of oil and gas exploration and production activities pursuant to a mineral lease, and the contamination resulted from the oil company's noncommercial disposal of oil field exploration and production waste; the contamination resulted directly from oil field exploration and production activities on the property, not via commercial disposition, such that the Mississippi Oil and Gas Board had exclusive authority over noncommercial disposal of oil field exploration and production waste; therefore, the landowners had to assert their claims based on the contamination before the Board before suing privately. Town of Bolton v. Chevron Oil Co., 919 So. 2d 1101 (Miss. Ct. App. 2005).

§ 53-1-17. Powers of board.

JUDICIAL DECISIONS

2. Construction and application.
3.5 State preemption.
5. Miscellaneous.

2. Construction and application.

Subsections (3)(a) and (7) are regulating different areas and, therefore, can be read in harmony. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

3.5 State preemption.

Forrest County Board of Supervisors had the authority to enact a fencing ordinance under the home rule statute and the ordinance was not preempted by state law since: (1) the Mississippi legislature had not expressly granted the Mississippi Oil and Gas Board (OGB) the exclusive authority to address industry safety issues: (2) the ordinance was not inconsistent with state oil and gas statutes and regulations; and (3) the OGB had not promulgated any regulation prohibiting perimeter fencing. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

5. Miscellaneous.

Because the amendments to State Oil and Gas Board Rule 68 regulated the disposal of Naturally Occurring Radioactive Materials (NORM), and subsection (3)(a) did not distinguish between commercial and noncommercial disposal of waste when stating that the Mississippi Oil and Gas Board had to seek the approval of the Mississippi Commission on Environmental Quality, the Board exceeded its authority by not seeking the approval of the Commission before adopting the amendments. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Forrest County fencing ordinance that required perimeter fencing around oil and gas facilities did not materially impede the Mississippi Oil and Gas Board's authority to make inspections of oil and gas sites and the requirement that the Mississippi State Oil and Gas supervisor and his representatives to have access to all wells drilled for oil and gas at any and all times in light of the public policy considerations of protecting private property and the health and safety of Forrest County citizens cited by the Forrest County Board of Supervisors in adopting the ordinance. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

§ 53-1-19. Rules of procedure before board to be consistent with Title 25, Chapter 43; recording and preservation of proceedings.

The board shall prescribe its rules of order or procedure in hearings or other proceedings before it consistent with Title 25, Chapter 43. The board may provide for the recording and preservation of its proceedings by order entered on its minutes.

SOURCES: Codes, 1942, § 6132-11; Laws, 1948, ch. 256, § 7a; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1a; Reenacted without change, Laws, 1982, ch. 485, § 10; Laws, 1988, ch. 431, § 1, Reenacted, Laws, 1990, ch. 357, § 9; Reenacted without change, Laws, 1991, ch. 340, § 10; Laws, 2007, ch. 325, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment rewrote the section to conform notice procedures applicable to the board concerning notice due in administrative proceedings before a state body.

§ 53-1-33. Supervisor and his representatives to have access to all wells.

Editor's Note — [This section was reenacted without change by Laws of 1991, ch. 340, § 17, effective from and after passage (approved March 11, 1991). Since the language of the section as it appears in the parent volume is unaffected by the reenactment, it is not reprinted in this supplement as directed by § 30 of ch. 340.]

JUDICIAL DECISIONS

1.-2. [Reserved for future use.]
3. Access not impeded.

1.-2. [Reserved for future use.]

3. Access not impeded.

Forrest County fencing ordinance that required perimeter fencing around oil and gas facilities did not materially impede the Mississippi Oil and Gas Board's authority to make inspections of oil and gas sites and the requirement that the Mississippi State Oil and Gas supervisor and his representatives to have access to all wells drilled for oil and gas at any and all times in light of the public policy considereations of protecting private property and the health and safety of Forrest County citizens cited by the Forrest County Board of Supervisors in adopting the ordinance. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

§ 53-1-47. Penalty for violations.

(a)(i) Any person, who, for the purpose of evading the provisions of Sections 53-1-1 through 53-1-47, inclusive, or any rule, regulation or order made thereunder, shall make or cause to be made any false entry, statement of fact or omission in any report required by such sections or by any rule, regulation or order thereunder or in any account, record or memorandum kept in connection with the provisions thereof or who, for such purpose, shall mutilate, alter, conceal or falsify any such report, account, record or memorandum, shall be subject to a penalty of not more than Ten Thousand Dollars ($10,000.00) per day for each day of such violation to be assessed by the board. In determining the amount of the penalty, the board shall consider the factors specified in subsection (d) of this section. Such penalties shall be assessed according to the procedures set forth in subsection (b) of this section.

(ii) Any person, who, for the purpose of evading the provisions of Sections 53-1-1 through 53-1-47, inclusive, or any rule, regulation or order made thereunder, shall intentionally make or cause to be made any false entry, statement of fact or omission in any report required by said sections or by any rule, regulation or order thereunder or in any account, record or memorandum kept in connection with the provisions thereof or who, for such purpose, shall mutilate, alter, conceal or falsify any such report, account, record or memorandum shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or imprisonment for a term of not less than ten (10) days nor more than six (6) months for each such violation, or both such fine and imprisonment.

(b) Any person who violates any provision of Sections 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-33, and 53-3-39 through 53-3-165, or any lawful rule, regulation or order of the board made hereunder, shall, in addition to any penalty for such violation that is otherwise provided for herein, be subject to a penalty of not to exceed Ten Thousand Dollars ($10,000.00) per day for each day of such violation to be assessed by the board. When any charge is filed with the board charging any person with any such violation, the board shall conduct an adjudicative proceeding in accordance with the Administrative Procedures Law. Such proceeding shall be held by not less than three (3) members of the board and a unanimous verdict of all members hearing such charge shall be necessary for conviction and in the event of a conviction all members of the board hearing such cause must agree on the penalty assessed.

Except as otherwise authorized in Section 7-5-39, the Attorney General, by his designated assistant, shall represent the board in all such proceedings. If he represents the board, the Attorney General shall also designate a member of his staff to present evidence and proof of such violation in the event such charge is contested.

All penalties assessed by the board under the provisions of this section shall have the force and effect of a judgment of the circuit court and shall be enrolled in the office of the circuit clerk and execution may be issued thereon. All such penalties paid or collected shall be paid to the State Treasurer for credit to the Special Oil and Gas Board Fund.

Any person adjudged guilty of any such violation shall have the right of appeal in accordance with the provisions of Section 53-1-39.

The payment of any penalty as provided herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition or the transportation, refining, processing or handling in any other way of such illegal oil, illegal gas or illegal product.

(c) Any person who aids or abets any other person in the violation of any provision of Sections 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any rule, regulation or order made thereunder, shall be subject to the same penalties as are prescribed herein for the violation by such other person.

(d) In determining the amount of the penalty under subsection (a), (b) or (c) of this section, the board shall consider at a minimum the following factors:

(i) The willfulness of the violation;

(ii) Any damage to water, land or other natural resources of the state or their users;

(iii) Any cost of restoration and abatement;

(iv) Any economic benefit to the violator as a result of noncompliance;

(v) The seriousness of the violation, including any harm to the environment and any harm to the health and safety of the public; and

(vi) Any prior violation by such violator.

(e) The board is authorized to utilize the provisions of Section 85-7-132 to enforce penalties provided by this section.

SOURCES: Codes, 1942, § 6132-28; Laws, 1948, ch. 256, § 15; Laws, 1982, ch. 485, § 24; Laws, 1989, ch. 570, § 1; Reenacted, Laws, 1990, ch. 357, § 24; Reenacted without change, Laws, 1991, ch. 340, § 24; Laws, 1997, ch. 482, § 3; Laws, 2007, ch. 325, § 2; Laws, 2012, ch. 546, § 22, eff from and after July 1, 2012.

Amendment Notes — The 2007 amendment, in the first paragraph of (b), rewrote the second sentence, and substituted "proceeding" for "hearing" in the third sentence; and in the second paragraph of (b), deleted "and shall rule on any objection to proof or evidence offered" at the end of the first sentence.

The 2012 amendment in the second paragraph of (b), added the exception at the beginning, and added "If he represents the board" in the last sentence.

JUDICIAL DECISIONS

1. In general.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Jurisdiction of the Oil and Gas Board extended to the landowners' fraud claims asserting that oil company misled the landowners, the public, and the Oil and Gas Board; this was because judicial resolution of those claims would require a jury to determine whether the oil company misrepresented information to the board in violation of the board's reporting requirements; the board had to be given the chance to investigate and to penalize the oil company for any false reporting that occurred. Town of Bolton v. Chevron Oil Co., 919 So. 2d 1101 (Miss. Ct. App. 2005).

ADMINISTRATION EXPENSE TAX

Sec.

§ 53-1-71. Definitions for §§ 53-1-73 to 53-1-77.

As used in Sections 53-1-73 to 53-1-77:

The term "barrel of oil" shall be forty-two (42) United States standard gallons corrected to sixty (60) degrees Fahrenheit and all measurements for volume shall be in one hundred percent (100%) strappings.

"Cubic foot of gas" shall be that volume of gas which occupies one (1) cubic foot of space at a pressure of ten (10) ounces above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch corrected to sixty (60) degrees Fahrenheit flowing temperature.

The term "person" shall mean any individual, corporation, partnership, association, or any state, municipality, political subdivision of any state, or any agency, department or instrumentality of the United States, or any other entity, or any officer, agent or employee of any of the above.

In addition to the customary meaning of oil, the term "oil" shall include any type of salvaged crude oil which, after any treatment, becomes marketable.

SOURCES: Codes, 1942, § 6132-44; Laws, 1948, ch. 318, § 4; Reenacted without change, Laws, 1982, ch. 485, § 25; Laws, 1983, ch. 503, § 2; Reenacted, Laws, 1990, ch. 357, § 25; Reenacted without change, Laws, 1991, ch. 340, § 25; Laws, 2009, ch. 443, § 4, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote the next to last paragraph.

JUDICIAL DECISIONS

1. School districts.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 53-1-73. Charge imposed to pay for administration expenses.

For the purposes of paying the costs and expenses incurred in connection with the administration and enforcement of the oil and gas conservation laws of the State of Mississippi and of the rules, regulations and orders of the State Oil and Gas Board, there is hereby levied and assessed against each barrel of oil produced in the State of Mississippi a charge not to exceed sixty (60) mills on each barrel of such oil sold, and against each one thousand (1,000) cubic feet of gas produced and sold a charge not to exceed six (6) mills on each one thousand (1,000) cubic feet of gas. The State Oil and Gas Board shall fix the amount of such charge in the first instances, and may, from time to time, change, reduce or increase the amount thereof, as in its judgment the charges against the fund may require, but the amounts fixed by said board shall not exceed the limits hereinabove prescribed; and it shall be the duty of the board to make collection of such assessments. All monies collected shall be used exclusively to pay the expenses and other costs in connection with the functioning of the State Oil and Gas Board and the administration of the oil and gas conservation laws of the State of Mississippi now in force or hereafter enacted and the rules, regulations and orders of said board.

SOURCES: Codes, 1942, § 6132-41; Laws, 1948, ch. 318, § 1; Laws, 1972, ch. 482, § 1; Laws, 1975, ch. 342; Laws, 1980, ch. 525; Laws, 1982, ch. 485, § 26; Laws, 1983, ch. 473; Reenacted and amended, Laws, 1990, ch. 357, § 26; Reenacted without change, Laws, 1991, ch. 340, § 26; Laws, 1997, ch. 543, § 1; Laws, 2007, ch. 363, § 3; Laws, 2009, ch. 443, § 5, eff from and after July 1, 2009.

Amendment Notes — The 2007 amendment, in the first sentence, substituted "oil produced and sold" for "oil produced and saved"; deleted "saved" following "(1,000) cubic feet of gas produced"; and made a minor stylistic change.

The 2009 amendment deleted "and sold" preceding "in the State of Mississippi a charge not to exceed sixty (60) mills on each barrel of such oil" and added "sold" thereafter in the first sentence of the paragraph.

JUDICIAL DECISIONS

1. Liability for administrative fees.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. §§ 53-1-73 and 53-1-77, the State Oil and Gas Board Supervisor is authorized to expend funds from the Oil and Gas Conservation Fund to purchase a data management system determined to be needed by the Board to perform its duties, and thereafter to transfer funds from the Emergency Plugging Fund to the Oil and Gas Conservation Fund if the Oil and Gas Conservation Fund Surplus is less than $200,000. Ivshin, March 9, 2007, A.G. Op. #07-00100, 2007 Miss. AG LEXIS 99.

§ 53-1-75. Persons liable.

The persons owning an interest (working interest, royalty interest, payments out of production or any other interest) in the oil or gas subject to the charge provided in Section 53-1-73 shall be liable for the charge in proportion to their ownership at the time of production. The charge assessed and fixed in Section 53-1-73 shall be payable monthly on a well by well basis, and the persons required to remit the charge shall remit the sum due to the board on or before the twenty-fifth day of the month next following the month in which the production is sold out of which the assessment arises; the remittance shall comply with any rules and regulations which may be adopted by the board in regard thereto.

Remittances with respect to all production against which any assessment hereunder is levied shall be made by the following persons:

(a) With respect to assessments against oil or gas purchased in this state at the well under any contract or agreement requiring payment for such production to the respective persons owning any interest therein (including working interests, royalty interests, payments out of production or any other interests in such production), by the person purchasing such production.

(b) With respect to any oil, or gas purchased in this state at the well without any contract or agreement requiring payment for such production to respective persons owning an interest therein, and with respect to any oil or

gas produced from any well but not sold at that well, by the operator of the well from which the production is obtained.

The persons remitting the charge required in this section are hereby authorized, empowered and required to deduct from any amounts due the persons owning an interest in the oil or gas at the time of production the proportionate amount of the charge before making payment to such owners.

SOURCES: Codes, 1942, § 6132-42; Laws, 1948, ch. 318, § 2; Reenacted without change, Laws, 1982, ch. 485, § 27; Reenacted, Laws, 1990, ch. 357, § 27; Reenacted without change, Laws, 1991, ch. 340, § 27; Laws, 2007, ch. 363, § 4, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in the second sentence in the introductory paragraph, inserted "on a well by well basis," substituted "production is sold" for "production occurs" and substituted "the remittance shall comply" for "the remittance to comply"; substituted "required in this section" for "as herein provided" in the last paragraph; and made minor stylistic changes throughout.

JUDICIAL DECISIONS

1. School districts.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 53-1-77. Oil and gas conservation fund; use of excess funds to plug orphan oil or gas wells; emergency plugging fund.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. §§ 53-1-73 and 53-1-77, the State Oil and Gas Board Supervisor is authorized to expend funds from the Oil and Gas Conservation Fund to purchase a data management system determined to be needed by the Board to perform its duties, and thereafter to transfer funds from the Emergency Plugging Fund to the Oil and Gas Conservation Fund if the Oil and Gas Conservation Fund Surplus is less than $200,000. Ivshin, March 9, 2007, A.G. Op. #07-00100, 2007 Miss. AG LEXIS 99.

CHAPTER 3

Development, Production and Distribution of Gas and Oil

IN GENERAL

§ 53-3-3. Waste unlawful.

JUDICIAL DECISIONS

1. Disposal.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

§ 53-3-7. Integration of interests; pooling agreements and orders.

(1)(a) When two (2) or more separately owned tracts of land are embraced within an established drilling unit or when there are separately owned interests in all or part of an established drilling unit the persons owning the drilling rights therein and the rights to share in the production therefrom may validly agree to integrate their interests and to develop their lands as a drilling unit. Where, however, such persons have not agreed to integrate their interests the board may, for the prevention of waste or to avoid the drilling of unnecessary wells, require such persons to integrate their interests and to develop their lands as a drilling unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense.

The portion of the production allocated to the owner of each tract included in a drilling unit formed by a pooling order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

(b) Except as otherwise provided for in this section, in the event such pooling is required, the cost of development and operation of the pooled unit chargeable by the operator to the other interested owner or owners shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable including a reasonable charge for supervision. In the event that the operator elects to proceed under the provisions of this subsection (1)(b), and does not elect to seek alternate charges as provided for in this section, the notice procedure followed shall be in accordance with Section 53-1-21, Mississippi Code of 1972.

(c) For the purposes of this section, as to a drilling unit, the term "nonconsenting owner" shall mean an owner of drilling rights which the owner has not agreed, in writing, to integrate in the drilling unit. The owner may own other drilling rights in the unit which the owner has agreed, in writing, to integrate in the unit and thereby also be a "consenting owner" as to the interest which the owner has agreed to integrate in the unit.

(2)(a) In the event that one or more owners owning not less than thirty-three percent (33%) of the drilling rights in a drilling unit voluntarily consent to the drilling of a unit well thereon, and the operator has made a good faith effort to (i) negotiate with each nonconsenting owner to have said owner's interest voluntarily integrated into the unit, (ii) notify each nonconsenting owner of the names of all owners of drilling rights who have agreed to integrate any interests in the unit, (iii) ascertain the address of each nonconsenting owner, (iv) give each nonconsenting owner written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation and the estimated cost of the proposed operation, and (v) offer each nonconsenting owner the opportunity to lease or farm out on reasonable terms or to participate in the cost and risk of developing and operating the unit well involved on reasonable terms, by agreeing in writing, then the operator may petition the board to allow it to charge alternate charges (alternate to and in lieu of the charges provided for in subsection (1)(b) of this section).

(b) Any such petition on which alternate charges may be ordered by the board shall include a statement which shall name all nonconsenting real parties in interest in said proposed drilling unit, as of a date not more than ninety (90) days prior to the filing of the petition, giving each such person's name, and address if known; and if any owner's address is not known, the operator shall state in its petition that such person's address is unknown after diligent search and inquiry. Only those parties served with actual or constructive notice as set forth hereinbelow will be subject to any alternate charges allowed by the board.

(c) Upon the filing of a petition on which alternate charges may be ordered, the petitioner shall have prepared, and furnish to the board with said petition, a notice to each and all nonconsenting real parties in interest whose address is unknown, whether such person be a resident of the State of Mississippi or not, which the board shall have published, noticing each such person to appear before a regular meeting of the board sufficiently distant in time to allow thirty (30) days to elapse between the date of the last publication of said notice as hereinafter provided, and the date of the regular meeting of the board to which each such person is noticed. Said notice shall also notice all unknown heirs or devisees of deceased owners, if any there be, and all unknown persons owning drilling rights in said proposed drilling unit. The notice shall be substantially in the following form, to wit:

NOTICE TO APPEAR BEFORE THE STATE OIL AND GAS BOARD

You are noticed to appear before the State Oil and Gas Board at its regular _____ term, being on the _____ day of _____, 20_____ to show cause if you can why the petition of _____
_____

(Operator)

being Petition No. _____ in said board and seeking to force to integrate and pool all interests in (description of Unit by legal description) _____
_____ should not be granted.

To _____ (inserting the name of such person or persons, whose address is unknown), and all such unknown heirs or devisees and all such unknown owners, whose names and addresses remain unknown after diligent search and inquiry.

Said meeting of said board shall be held at _____ (the then hearing room of said Oil and Gas Board) on the above date at _____.
(the time)

This _____ day of _____, A.D._____.

_____
supervisor

(d) The publication of notice to nonconsenting real parties in interest whose address is unknown after diligent search and inquiry shall be made once in each week during three (3) successive weeks in a public newspaper of the county or counties in which the proposed drilling unit is located, if there be such a newspaper. If there is not such a county newspaper, then the said publication of notice shall be published in a newspaper having general circulation in the State of Mississippi. The period of publication shall be deemed to be completed at the end of twenty-one (21) days from the date of the first publication, provided there have been three (3) publications made as hereinabove required.

(e) Upon the filing of a petition on which alternate charges may be ordered, the petitioner shall also have prepared, and shall furnish to the board, a notice which shall be substantially in the form set out above, to each nonconsenting real party in interest whose address is known, together with addressed and stamped envelopes, and the board shall mail each notice by certified mail, return receipt requested, sufficiently distant in time to allow thirty (30) days to elapse between the date of the mailing of said notice and the date of the regular meeting of the board at which said petition will be first scheduled to be heard.

(f) Petitioner shall also advance to the board at the time of the filing of said petition the cost of publication and mailing of notices as set out above which shall be established by the board. Said costs of publication and

mailing of notices shall be considered as part of the costs of operation which are chargeable to the nonconsenting owner's nonconsenting share of production as set forth in paragraph (g) of this subsection (2).

(g) In the event a pooling order is issued by the board, and any nonconsenting owner does not subsequently agree in writing as provided for herein, and if the operations on the existing or proposed well which are described in the pooling order are actually commenced within one (1) year after the pooling order is issued by the board, and thereafter with due diligence and without undue delay, the existing or proposed well is actually completed as a well capable of producing oil, gas and/or other minerals in quantities sufficient to yield a return in excess of monthly operating costs, then, subject to the limitations set out in this section, the operator and/or the appropriate consenting owners shall be entitled to receive as alternate charges (alternate to and in lieu of the charges provided for in subsection (1)(b) of this section; provided, however, that in no event shall the operator and/or the appropriate consenting owners be entitled to recover less than such charges provided in subsection (1)(b) of this section) the share of production from the well attributable to the nonconsenting owner's nonconsenting interests in the unit established or subsequently reformed for production therefrom, until the point in time when the proceeds from the sale of such share, calculated at the well, or the market value thereof if such share is not sold, after deducting production and excise taxes, which operator will pay or cause to be paid, and the payment required by this paragraph (g) shall equal the sum of:

(i) One hundred percent (100%) of the nonconsenting owner's nonconsenting share of the cost of any newly acquired surface equipment beyond the wellhead connections including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping; and

(ii) Two hundred fifty percent (250%) of that portion of the costs and expenses of the operations provided for in the pooling order, and two hundred fifty percent (250%) of that portion of the cost of newly acquired equipment in the well, including wellhead connections, which would have been chargeable to the nonconsenting owner's nonconsenting share thereof; provided, however, when a mineral interest that is severed from the surface estate is owned by a nonconsenting owner or when a mineral interest is subject to an oil and gas lease that is owned by a nonconsenting owner, the payment under this subparagraph (ii) shall be three hundred percent (300%); and

(iii) One hundred percent (100%) of the nonconsenting owner's nonconsenting share of the cost of operation of the well commencing with first production and continuing to such point in time.

Whenever a drilling unit established by a pooling order issued by the board under subsection (2) of this section is to be reformed or altered by the board for good cause, after notice and hearing, then the interest of any nonconsenting owner listed in the pooling order who received notice of the application to reform or alter the unit and had not agreed in writing as

provided for herein shall remain subject to the charges set forth in this subsection (2)(g) with respect to its interest in the reformed or altered unit. If there is any nonconsenting owner within a proposed reformed or altered unit who has not been previously provided the information and offers set forth in subparagraphs (ii) through (v) of subsection (2)(a) of this section which was sent to the owners, and if the applicant for an order of reformation or alteration of such unit provides to the nonconsenting owner the information and offers set forth in subparagraphs (ii) through (v) of subsection (2)(a) of this section at the same time and in the same manner as such nonconsenting owners receive notice of the application to reform or alter the drilling unit, then the interest of any nonconsenting owner listed in the pooling order for the reformed or altered unit who does not agree in writing as provided for herein shall be subject to the charges set forth in this subsection (2) (g) with respect to its interest in the reformed or altered unit.

Whenever any one (1) operator has filed for alternate charges on two (2) drilling units, which units are direct, partially direct or diagonal offsets one to the other, such operator may not file a petition for alternate charges, as distinguished from the charges provided by subsection (1) (b), as to any additional units which are direct, partially direct or diagonal offsets to the said first two (2) units of that operator until said operator has drilled, tested and completed the first two (2) such wells, as wells capable of production or completed as dry holes or either, and has filed completion reports on said first two (2) wells with the board, or the permits for such well or wells have expired if one or both of them be not drilled.

The pooling order if issued shall provide that each nonconsenting owner shall be afforded the opportunity to participate in the development and operation of the well in the pooled unit as to all or any part of said owner's interest on the same costs basis as the consenting owners by agreeing in writing to pay that part of the costs of such development and operation chargeable to said nonconsenting owner's interest, or to enter into such other written agreement with the operator as the parties may contract, provided such acceptance in writing is filed with the board within twenty (20) days after the pooling order is filed for record with the board.

The pooling order shall provide that the well be drilled on a competitive contract, arms length, basis; provided, however, that the operator may employ its own tools or those of affiliates, but charges therefor shall not exceed the prevailing rates in the area.

(h) Within sixty (60) days after the completion of any operation on which alternate charges have been ordered, the operator shall furnish any nonconsenting owner who may request same an inventory of the equipment in and connected to the well, and an itemized statement of the cost of drilling, deepening, plugging back, testing, completing and equipping the well for production; or, at its option, the operator, in lieu of an itemized statement of such costs of operation, may submit detailed monthly statements of said costs. Each month thereafter, during the time the operator and/or consenting parties are being reimbursed, the operator shall furnish

any nonconsenting owner who may request same with an itemized statement of all costs and liabilities incurred in the operation of the well, together with a statement of the quantity of oil and gas produced from it and the amount of proceeds realized from the sale of the well's production during the preceding month. Any amount realized from the sale or other disposition of equipment acquired in connection with any such operation which would have been owned by a nonconsenting owner had it participated therein as to its nonconsenting interest shall be credited against the total unreturned costs of the work done and of the equipment purchased in determining when the interest of such nonconsenting owner shall be owned by said nonconsenting owner as above provided; and if there is a credit balance, it shall be paid to such nonconsenting owner. From the point in time provided for in paragraph (g) of this subsection (2), each nonconsenting owner shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as such nonconsenting owner would have been entitled to had it participated in the drilling, reworking, deepening and/or plugging back of said well. Thereafter, except as otherwise provided in this section, the operator shall be entitled to charge each nonconsenting owner such nonconsenting owner's proportionate part of all reasonable costs incurred by the operator in operating the unit well and the unit, including a reasonable charge for supervision, and in the event such nonconsenting owner fails to pay such proportionate share of such costs within thirty (30) days after receipt by the nonconsenting owner of a valid invoice, the operator shall be entitled to receive such nonconsenting owner's share of production until such time as such unpaid share of costs shall have been recovered by the operator.

(i) In the event that a leased interest is subject to an order of pooling and integration, and the operator and/or the appropriate consenting owners are entitled to alternate charges as provided by paragraph (g) of this subsection (2), and if there be no reasonable question as to good and merchantable title to the royalty interest, the lessor of said lease shall be paid, by the operator or purchaser of production, the proceeds attributable to said lessor's contracted royalty, not to exceed an amount of three-sixteenths (3/16) of the proceeds attributable to the nonconsenting owner's proportionate share of production. Nothing herein contained shall affect or diminish in any way the responsibility of the nonconsenting owner to account for the payment of any royalty or other payment, not paid as herein provided, which may burden or be attributable to the interest owned by such nonconsenting owner.

(3) When production of oil or gas is not secured in paying quantities as a result of such integration or pooling of interests, there shall be no charge payable by the nonconsenting owner or owners as to such owner's nonconsenting interest.

(4) In the event of any dispute relative to costs, the board shall determine the proper costs, after due notice to all interested parties and a hearing thereon. Appeals may be taken from such determination as from any other order of the board.

(5) The State Oil and Gas Board shall in all instances where a unit has been formed out of lands or areas of more than one (1) ownership, require the operator when so requested by an owner, to deliver to such owner or his assigns his proportionate share of the production from the well common to such drilling unit; but where necessary, such owner receiving same shall provide at his own expense proper receptacles for the receipt or storage of such oil, gas or distillate.

(6) Should the persons owning the drilling or other rights in separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the board is without authority to require integration as provided in this section, then, subject to all other applicable provisions of this chapter, and of Chapter 1 of this title, the owner of each tract embraced within the drilling unit may drill on his tract; but the allowable production from such tract shall be such proportion of the allowable production for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(7) The State Oil and Gas Board in order to prevent waste and avoid the drilling of unnecessary wells may permit (i) the cycling of gas in any pool or portion thereof or (ii) the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring such reservoir, maintaining pressure or carrying on secondary recovery operations. The board shall permit the pooling or integration of separate tracts or separately owned interests when reasonably necessary in connection with such operations.

(8) Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among such owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade.

SOURCES: Codes, 1942, § 6132-22; Laws, 1948, ch. 256, § 10; Laws, 1950, ch. 220, § 3; Laws, 1984, ch. 511, § 1; Laws, 1987, ch. 417; Laws, 2014, ch. 392, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "one (1) year" for "one hundred eighty (180) days" in (2)(g).

JUDICIAL DECISIONS

2. Pooling agreements—In general.
4. —Forced pooling.

2. Pooling agreements—In general.

4. —Forced pooling.

Property owner became eligible to participate in a proposed oil and gas well on the same costs basis as the consenting owners because the owner acted in the manner and within the time frame prescribed by Miss. Code Ann. § 53-3-7, tendered a check to the operator in the amount of its proportionate share of the dry-hole costs for drilling the well, and agreed in writing to advance its share of the completion costs to the operator. Tellus Operating Group, LLC v. Maxwell Energy, Inc., — So. 3d —, 2013 Miss. App. LEXIS 594 (Miss. Ct. App. Sept. 17, 2013), opinion withdrawn by, substituted opinion at 2014 Miss. App. LEXIS 209 (Miss. Ct. App. Apr. 8, 2014).

§ 53-3-13. Permit fee; disposition of fees.

(1) Any person securing a permit to drill a well in search of oil or gas under the provisions of Section 53-3-11 shall pay to the Oil and Gas Supervisor a fee of Six Hundred Dollars ($600.00) upon and for the issuance of the permit. A lesser sum may be paid if the State Oil and Gas Board shall adopt a rule fixing the amount to be paid at a sum less than Six Hundred Dollars ($600.00). Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed. In the event a change of operators from that listed in the drilling permit is desired, the operator listed and the proposed new operator shall apply to the State Oil and Gas Board for authority to change operators on forms to be prescribed by order of the State Oil and Gas Board. The fee for such change of operators shall be One Hundred Dollars ($100.00) per change, or some lesser sum as may be fixed by order of the board.

(2) The State Oil and Gas Supervisor, as ex officio Secretary of the State Oil and Gas Board, shall remit to the State Treasurer all monies collected by reason of the assessments made, fixed and authorized under the provisions of subsection (1) of this section, and the State Treasurer shall deposit all such monies in a special fund known as the "Oil and Gas Conservation Fund."

SOURCES: Codes, 1942, § 6132-30; Laws, 1948, ch. 319, §§ 1, 2; Laws, 1966, ch. 280, § 1; Laws, 1977, ch. 487; Laws, 1978, ch. 520, § 14; Laws, 1982, ch. 485, § 31; Laws, 2007, ch. 363, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in (1), substituted "Six Hundred Dollars ($600.00)" for "three hundred dollars ($300.00)" twice, and "one (1) year" for "six (6) months" twice; and substituted "provisions of subsection (1)" for "provisions of the first paragraph" in (2).

§ 53-3-25. Application for permit to drill in search of oil or gas.

Before any person shall commence the drilling of any well in search of oil or gas, the person shall file with the board his application for a permit to drill, accompanied by a certified plat and by a fee of Six Hundred Dollars ($600.00), payable to the State Oil and Gas Board. When two (2) or more separately owned tracts of land are embraced within the unit for which the permit is sought, the application shall affirmatively state whether there are separately owned tracts in the drilling unit for which the permit is sought, and if so, whether the person owning the drilling rights therein and the rights to share in the production therefrom have agreed to develop their lands as a drilling unit and to the drilling of the well, as contemplated by Section 53-3-7. If drilling operations have not commenced within one (1) year after date of issuance, the permit shall become void. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued promptly by the supervisor. The issuance of the permit shall constitute the establishment of the drilling unit as designated in the application and shall likewise constitute the approval of the well location set out in the permit. On good cause shown, the unit may be altered by the board after notice and hearing.

If the application for permit does not comply in all respects with the rules and regulations of the board relating thereto, the application shall be disallowed and the supervisor shall promptly notify the applicant of the reason or reasons for the disallowance.

SOURCES: Laws, 1982, ch. 485, § 32(1); Laws, 2007, ch. 363, § 2, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in the first paragraph, substituted "Six Hundred Dollars ($600.00)" for "Three Hundred Dollars ($300.00)" and "one (1) year" for "six (6) months"; and made minor stylistic changes throughout.

§ 53-3-27. Application to commence drilling of stratigraphic test or well below freshwater level; duration of permit.

Before any person shall commence the drilling of a stratigraphic test or any well below the freshwater level (other than an oil or gas well or injection well), such person shall file with the board his application for a permit to drill, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued promptly by the supervisor. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

If the application for a permit does not comply in all respects with the rules and regulations of the board relating thereto, said application shall be disallowed, and the supervisor shall promptly notify the applicant of the reason or reasons for the disallowance.

SOURCES: Laws, 1982, ch. 485, § 32(2); Laws, 1989, ch. 444, § 2; Laws, 2009, ch. 443, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, in the first paragraph, substituted "Six Hundred Dollars ($600.00)" for "Three Hundred Dollars ($300.00)" in the first sentence and added the last sentence.

§ 53-3-29. Application to commence drilling injection well; duration of permit.

Before any person shall commence the drilling of an injection well, such person shall file with the board his application for a permit to drill, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued by the supervisor upon approval by the State Oil and Gas Board, after notice and hearing. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

SOURCES: Laws, 1982, ch. 485, § 32(3); Laws, 1989, ch. 444, § 3; Laws, 2009, ch. 443, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Six Hundred Dollars ($600.00)" for "Three Hundred Dollars ($300.00)" in the first sentence; and added the last sentence.

§ 53-3-31. Application to rework abandoned well to injection well; duration of permit.

Before any person shall commence operations to rework an abandoned well to an injection well, such person shall file with the board his application to rework, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued by the supervisor upon approval by the State Oil and Gas Board, after notice and hearing. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

SOURCES: Laws, 1982, ch. 485, § 32(4); Laws, 1989, ch. 444, § 4; Laws, 2009, ch. 443, § 3, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment substituted "Six Hundred Dollars ($600.00)" for "Three Hundred Dollars ($300.00)" in the first sentence; and added the last sentence.

UNITIZATION OF OIL AND GAS FIELDS AND POOLS

§ 53-3-103. Oil and Gas Board may order unit operation.

JUDICIAL DECISIONS

2. Authority of board.

Even if surface landowners' appeal of a decision by the Mississippi Oil and Gas Board to grant a plan of unitization to a mineral lessee was not procedurally barred, the Board had the authority under Miss. Code Ann. § 53-3-103(a) and (c) to approve the unitization plan, the landowners were working interest owners in the unit from other tracts, the mineral lessee followed each statutory step required to have the plan approved, and the landowners failed to object to the plan. Douglas v. Denbury Onshore, LLC, 78 So. 3d 912 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 80 So. 3d 111, 2012 Miss. LEXIS 64 (Miss. 2012).

§ 53-3-119. Court review of order of oil and gas board by appeal to the chancery court.

JUDICIAL DECISIONS

1. Untimely appeal.

Surface landowners were procedurally barred under Miss. Code Ann. § 53-3-119 from challenging a decision by the Mississippi Oil and Gas Board to grant ownership and use of an abandoned wellbore to the mineral lessee because the Board issued its approval on September 17, 2003, and the landowners appeal occurred on March 12, 2009, well beyond the 30-day statutory limit to appeal the Board's decision. Douglas v. Denbury Onshore, LLC, 78 So. 3d 912 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 80 So. 3d 111, 2012 Miss. LEXIS 64 (Miss. 2012).

CHAPTER 7

Surface Mining and Reclamation of Land

SEC.

§ 53-7-7. Permit requirement; applicability of law; exceptions and exemptions.

(1) Except as provided in this section, it is unlawful to commence an operation or operate a surface mine without a permit or coverage under a general permit as provided by this chapter.

(2) Except as expressly provided in this section, this chapter shall not apply to:

(a) Excavations made by the owner of land for the owner's own use and not for commercial purposes, where the materials removed do not exceed one thousand (1,000) cubic yards per year and where one (1) acre or less of land is affected;

(b) Excavations made by a public agency on a one-time basis for emergency use at an emergency site if:

(i) The excavation lies in the vicinity of the emergency site and affects less than one-fourth (¼) acre of mined surface area;

(ii) The landowner has signed a statement giving approval for the removal of the materials; and

(iii) The public agency notifies the department as required by the commission within two (2) working days of the removal of the materials;

(c) Operations for any materials on any affected area conducted before April 15, 1978, but this chapter shall apply to any additional land which the operation extended to or encompassed after April 15, 1978;

(d) Operations for any materials that affected four (4) acres or less and were greater than one thousand three hundred twenty (1,320) feet from any other affected area if:

(i) The operation began before July 1, 2002; and

(ii) The operator notified the commission of the commencement, expansion or resumption of the operation before July 1, 2002;

(e) Operations for any materials that affect four (4) acres or less, are greater than one thousand three hundred twenty (1,320) feet from any other affected area and commenced after July 1, 2002, if the operator notifies the department at least seven (7) calendar days before commencement or expansion of the operation as required in regulations adopted by the commission. The seven-day notice prior to mining requirement shall be waived and the operator may begin mining immediately after notifying the department if:

(i) The operator agrees, in the notification, to reclaim the mine site in accordance with the minimum standards adopted by the commission; or

(ii) The exempted operation is conducted for Mississippi Department of Transportation projects or state aid road construction projects funded in whole or in part by public funds; and

(f) Excavations made by the owner of land where the materials removed are transported to another location on that same land without using any public highway, road or street, and where the distance between the excavation and the location where the materials are deposited does not exceed five (5) miles; provided, that the owner of such land has the legal right to the materials.

(3) Exempt operations under paragraph (e) that are conducted for the MDOT projects or state aid road construction projects shall be reclaimed in accordance with the requirements of the Mississippi Standard Specifications for Road and Bridge Construction, Mississippi Department of Transportation

or Division of State Aid Road Construction, as applicable. Any operator failing to reclaim as required under this subsection may be subject to the penalties provided in Section 53-7-59(2).

(4) If a landowner refuses to allow the operator to complete reclamation in accordance with minimum standards or interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with minimum standards, the landowner shall assume the exempt notice and shall be responsible for any reclamation.

(5) All operations exempted under Sections 53-7-7(2)(d) and 53-7-7(2)(e) shall be subject to the prohibitions on mining in certain areas contained in Sections 53-7-49 and 53-7-51 and may be subject to the penalties in Section 53-7-59(2) for any violation of those sections.

(6) Any operator conducting operations exempted under Section 53-7-7(2)(b) or 53-7-7(2)(e) failing to notify the department in accordance with the regulations of the commission, may be subject to penalties provided in Section 53-7-59(2). Any operator exempted under Section 53-7-7(2)(e) who agrees in the notification to reclaim and fails to reclaim in accordance with that paragraph may be subject to penalties provided in Section 53-7-59(2).

SOURCES: Laws, 1977, ch. 476, § 4(1, 2); Laws, 2002, ch. 492, § 4; Laws, 2009, ch. 394, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment added (2)(f); and made minor stylistic changes.

§ 53-7-77. Surface Mine Worker Safety Training Program Operations Fund.

(1)(a) There is created in the State Treasury a special fund to be designated as the Surface Mine Worker Safety Training Program Operations Fund, referred to in this section as "special fund," to be administered by the executive director. The special fund shall consist of monies as may be appropriated by the Legislature and any other monies authorized under this section.

(b) Monies in the special fund shall be utilized to pay reasonable direct and indirect costs associated with surface mine worker safety training provided by the department including, but not limited to, matching funds for federal grants to meet federal grant requirements to pay a proportional share of the total cost of the training.

(c) Expenditures may be made from the special fund upon requisition by the executive director.

(d) The special fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(e) Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest

earned on amounts in the special fund shall be deposited to the credit of the special fund.

(2)(a) The commission shall set by order the fee for surface mine worker safety training, not to exceed the cost of providing the training.

(b) All monies collected under this subsection shall be deposited into the special fund.

(c) The commission may delegate to the department responsibility for the collection of fees under this subsection.

(d) Any person required to pay a fee under this subsection who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with Sections 49-17-33 and 49-17-35.

(e) Fees collected under this subsection shall not supplant or reduce in any way the general fund appropriation to the department.

SOURCES: Laws, 2009, ch. 436, § 1, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 436, § 2, provides:
"SECTION 2. Section 1 of this act shall be codified in Chapter 7, Title 53, Mississippi Code of 1972."

CHAPTER 9

Surface Coal Mining and Reclamation of Land

SEC.

MISSISSIPPI SURFACE COAL MINING AND RECLAMATION LAW

SEC.

§ 53-9-7. Definitions.

For the purposes of this chapter, the following terms shall have the meaning ascribed in this section unless the context requires otherwise:

(a) "Abandoned mine lands" means lands and waters affected by the mining or processing of coal before August 3, 1977, or affected by the mining or processing of noncoal minerals, including, but not limited to, sand, gravel, clay and soil, before August 3, 1977, and abandoned or left in either an unreclaimed or inadequately reclaimed condition, and for which there is no continuing reclamation responsibility required under state or federal law,

and which continue in the present condition substantially to degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public. Abandoned mine lands also means those lands and waters described by 30 USC 1232(g)(4), 30 USC 1233(b)(1) and 30 USC 1239.

(b) "Appeal" means an appeal to an appropriate court of the state taken from a final decision of the Permit Board or commission made after a formal hearing before that body.

(c) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be allowed if the Permit Board determines that the impoundments are in compliance with Section 53-9-45(2)(g).

(d) "As recorded in the minutes of the Permit Board" means the date of the Permit Board meeting at which the action concerned is taken by the Permit Board.

(e) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials.

(f) "Commission" means the Mississippi Commission on Environmental Quality.

(g) "Department" means the Mississippi Department of Environmental Quality.

(h) "Executive director" means the executive director of the department.

(i) "Exploration operations" means the disturbance of the surface or subsurface before surface coal mining and reclamation operations begin for the purpose of determining the location, quantity or quality of a coal deposit, and the gathering of environmental data to establish the conditions of the area before the beginning of surface coal mining and reclamation operations.

(j) "Federal act" means the Surface Mining Control and Reclamation Act of 1977, as amended, which is codified as Section 1201 et seq. of Title 30 of the United States Code.

(k) "Formal hearing" means a hearing on the record, as recorded and transcribed by a court reporter, before the commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the commission or Permit Board.

(*l*) "Imminent danger to health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before that condition, practice or

violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person subjected to the same conditions or practices giving rise to the peril would not expose himself or herself to the danger during the time necessary for abatement.

(m) "Interested party" means any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that operation, or in the matter of regulations promulgated by the commission, any person who is so situated that the person may be affected by the action.

(n) "Lignite" means consolidated lignite coal having less than eight thousand three hundred (8,300) British thermal units per pound, moist and mineral matter free.

(o) "Operator" means any person engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location.

(p) "Permit" means a permit to conduct surface coal mining and reclamation operations issued under this chapter.

(q) "Permit area" means the area of land indicated on the approved map submitted by the operator with the permit application which area of land shall be covered by the operator's performance bond.

(r) "Permit Board" means the Permit Board created under Section 49-17-28.

(s) "Person" means an individual, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization and any agency, unit or instrumentality of federal, state or local government, including any publicly owned utility or publicly owned corporation.

(t) "Prime farmland" means that farmland as defined by the United States Secretary of Agriculture on the basis of factors such as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register.

(u) "Public hearing," "informal hearing" or "public meeting" means a public forum organized by the commission, department or Permit Board for the purpose of providing information to the public regarding a surface coal mining and reclamation operation or regulations proposed by the commission and at which members of the public are allowed to make comments or ask questions or both of the commission, department or the Permit Board.

(v) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations under this chapter.

(w) "Revision" means any change to the permit or reclamation plan that does not significantly change the effect of the mining operation on either those persons impacted by the permitted operations or on the environment,

including, but not limited to, incidental boundary changes to the permit area or a departure from or change within the permit area, incidental changes in the mining method or incidental changes in the reclamation plan.

(x) "Secretary" means the Secretary of the United States Department of Interior.

(y) "State" means the State of Mississippi.

(z) "State geologist" means the head of the Office of Geology and Energy Resources of the department or a successor office.

(aa) "State reclamation program" means the Mississippi program for abandoned mine reclamation provided for in this chapter.

(bb) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of those operations.

(cc) "Surface coal mining operations" means:

(i) Activities conducted on the surface and immediate subsurface of lands in connection with a surface coal mine, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. These activities include, but are not limited to:

(A) Excavation for the purpose of obtaining coal including common methods such as contour, strip, auger, mountaintop removal, boxcut, open pit and area mining;

(B) The use of explosives and blasting, in situ distillation or retorting, leaching or other chemical or physical processing; and

(C) The cleaning, concentrating or other processing or preparation, and the loading of coal for commerce at or near the mine site.

These activities do not include exploration operations subject to Section 53-9-41.

(ii) Areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include, but are not limited to:

(A) Any adjacent land the use of which is incidental to any activities;

(B) All lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of any activities and for haulage;

(C) All lands affected by excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface resulting from or incident to the activities.

(dd) "Unwarranted failure to comply" means the failure of a permittee to prevent or abate the occurrence of any violation of a permit, this chapter or any regulation promulgated under this chapter due to indifference, lack of diligence or lack of reasonable care.

SOURCES: Laws, 1979, ch. 477, § 4; Laws, 1997, ch. 306, § 6; Laws, 2001, ch. 426, § 2; Laws, 2008, ch. 343, § 1, eff from and after passage (approved Mar. 25, 2008.)

Amendment Notes — The 2008 amendment, in (a), substituted "USC" for "USCS" everywhere it appears, and substituted "1233(b)(1)" for "1233(D)(1)."

ABANDONED MINE LANDS RECLAMATION PROGRAM

Sec.

§ 53-9-101. Priorities for expenditure of funds from Mine Lands Reclamation Account; certain sites and areas ineligible for expenditures; projects involving protection, repair, replacement, construction, or enhancement of certain utilities.

(1) Expenditures of funds from the Abandoned Mine Lands Reclamation Account on eligible lands and water shall reflect the following priorities:

(a) The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(b) The protection of public health and safety from adverse effects of coal mining practices; and

(c) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity.

(2) After certification under 30 USC 1240a(a) by the Governor to the United States Secretary of the Interior that all of the priorities stated in subsection (1) of this section for eligible lands and waters have been achieved, and upon concurrence by the secretary with that certification, funds in the Abandoned Mine Lands Reclamation Account may be used for reclamation at abandoned mine lands that were mined or processed for or effected by the mining or processing of noncoal minerals. Expenditure of funds for land, water and facilities referred to in this subsection shall reflect the following priorities in the order stated, in lieu of the priorities stated in subsection (1) of this section:

(a) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of mineral mining and processing practices;

(b) The protection of public health, safety and general welfare from adverse effects of mineral mining and processing practices;

(c) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(3) Sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978, 42 USC 7901 et seq., or which have been listed for remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq., shall not be eligible for expenditure from the Abandoned Mine Lands Reclamation Account.

(4) Reclamation projects involving the protection, repair, replacement, construction or enhancement of utilities, such as those relating to water supply, roads and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth and undertaken as they relate to the priorities stated in subsection (2) of this section.

SOURCES: Laws, 2001, ch. 426, § 4; Laws, 2008, ch. 343, § 2, eff from and after passage (approved Mar. 25, 2008.)

Amendment Notes — The 2008 amendment substituted "USC" for "USCS" everywhere it appears; deleted "general welfare" following "safety" in (1)(a) and (b) and made related stylistic changes; and deleted former (1)(d) and (e), which related to the protection of public facilities and the development of publicly owned land adversely affected by coal mining.

§ 53-9-113. Itemization of funds expended; filing of statement in county land records detailing increase in land value from expenditure of fund; statement to constitute lien upon land; hearing and appeal.

(1) Within six (6) months after the completion of projects funded by the commission, in whole or in part, with funds from the Abandoned Mine Lands Reclamation Account to restore, reclaim, abate, control or prevent adverse effects of past mining practices on privately owned land, the executive director shall itemize the funds expended and may file a statement in the land records of the county in which the land lies together with a notarized appraisal by a qualified independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past coal mining practices, if the funds expended shall result in a significant increase in property value. The statement shall constitute a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation,

abatement, control or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this section, who neither consented to, participated in nor exercised control over the mining operation which necessitated the reclamation performed under this chapter.

(2) Any owner of land subject to a lien imposed pursuant to this section may, within sixty (60) days of the filing of the lien, file a petition in the chancery court of the county in which the land lies to determine the increase in the market value of the land as a result of the reclamation work. The amount determined by the court to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement required by this section. Any party aggrieved by the decision may appeal as provided by law.

(3) The lien provided in this section shall be entered in the land records in the office in the county in which the land lies. The statement shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed on the land. Money derived from the satisfaction of liens shall be deposited in the Abandoned Mine Reclamation Account.

SOURCES: Laws, 2001, ch. 426, § 10; Laws, 2008, ch. 343, § 3, eff from and after passage (approved Mar. 25, 2008.)

Amendment Notes — The 2008 amendment, in the last sentence of (1), deleted "who owned the surface prior to May 2, 1977, and" following "in accordance with this section," near the middle, and substituted "this chapter" for "this act" at the end.

§ 53-9-115. Governor may request action against certain hazards caused by mining of minerals other than coal; limitations on funds available; acquisition of interest in land.

(1) The Governor may request the secretary to authorize the commission to fill voids, seal open or abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mining of minerals other than coal which the secretary determines could endanger life and property, constitute a hazard to public health and safety, or degrade the environment.

(2) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the state under the provisions of 30 USC 1232(g)(1) and (5). Projects funded under this section must meet the priorities described in Section 53-9-101(1)(a), but references to coal shall not apply.

(3) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meet the purpose of this section.

(4) The commission, with the approval of the secretary, may acquire by purchase, donation, easement or otherwise an interest in the land it determines is necessary to carry out the provisions of this section.

SOURCES: Laws, 2001, ch. 426, § 11; Laws, 2008, ch. 343, § 4, eff from and after passage (approved Mar. 25, 2008.)

Amendment Notes — The 2008 amendment, in (2), substituted "USC" for "USCS" in the first sentence; and inserted "(a)" following "Section 53-9-101(1)" in the last sentence.

CHAPTER 10

Interstate Mining Compact

§ 53-10-1. Findings and purposes.

(a) The Legislature finds and declares that:

(i) Within the state, mining constitutes a significant aspect of the state's economy.

(ii) The Interstate Mining Compact was established in 1966 to provide a forum for states having significant mining to exchange ideas on mining technology, conservation, and reclamation practices and to generate consensus policies for use as desired by member states and for input at the congressional and federal regulatory level of government.

(iii) Membership in the Compact by the state will provide the Governor, as the representative of the state on the Interstate Mining Compact Commission, direct input on significant mining issues and policies and access to ideas and sources of information, not otherwise available, which may enable the state to initiate progressive or desired policies and mining control techniques that will be to the benefit of the citizens of Mississippi and the mining industry in the state.

(b) The purposes of the Interstate Mining Compact are recognized to be to:

(i) Advance the protection and restoration of land, water, and other resources affected by mining.

(ii) Assist in the reduction, elimination, or counteracting of pollution or deterioration of land, water, and air attributable to mining.

(iii) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(iv) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.

(v) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

SOURCES: Laws, 2014, ch. 326, § 1, eff from and after July 1, 2014.

§ 53-10-2. Membership.

(a) Pursuant to the findings of the Legislature and subject to the limitations hereinafter set forth, the State of Mississippi hereby adopts the Interstate Mining Compact as embodied in the findings and purposes set forth above, and the state through the Office of the Governor is authorized to join and participate in the Interstate Mining Compact through membership on the Interstate Mining Compact Commission.

(b) The Governor may appoint a designee to serve as the Governor's official representative to the compact and to perform any functions in connection with the business of the compact.

SOURCES: Laws, 2014, ch. 326, § 2, eff from and after July 1, 2014.

§ 53-10-3. Limitations.

(a) No provisions of the Interstate Mining Compact, nor any policies of the Interstate Mining Compact Commission, shall be construed to limit, repeal, or supersede any law of the State of Mississippi.

(b) The Governor and the Legislature, or agents of either, shall have the right to inspect the books and accounts of the Interstate Mining Compact Commission at any reasonable time while the state is a member.

(c) A copy of the bylaws of the Interstate Mining Compact Commission shall be placed on file with the Director of the Office of Geology, Mississippi Department of Environmental Quality, and be available for inspection at any reasonable time by the Legislature or any interested citizen.

SOURCES: Laws, 2014, ch. 326, § 3, eff from and after July 1, 2014.

§ 53-10-4. Expenses.

The Mississippi Department of Environmental Quality may pay annually out of funds collected from Surface Coal Mining Permit Fees, or from funds granted to the state by the federal Office of Surface Mining Reclamation and Enforcement, the annual membership dues payable to the Interstate Mining Compact Commission for the membership of the State of Mississippi in that organization.

SOURCES: Laws, 2014, ch. 326, § 4, eff from and after July 1, 2014.

§ 53-10-5. General power of Governor and withdrawal.

(a) Within the limitations of this section, the Governor shall be entitled to exercise all the power of his office necessary in his judgment to maintain the state in good standing as a member and to participate therein.

(b) After the Governor has provided one (1) year's notice in writing to the governors of all other member states, the Legislature, by appropriate repealing legislation, may withdraw the state from the Interstate Mining Compact.

SOURCES: Laws, 2014, ch. 326, § 5, eff from and after July 1, 2014.

CHAPTER 11

Mississippi Geologic Sequestration of Carbon Dioxide Act

SEC.

§ 53-11-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Geologic Sequestration of Carbon Dioxide Act."

SOURCES: Laws, 2011, ch. 437, § 1, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-3. Legislative findings; jurisdiction.

(1) It is declared to be in the public interest for a public purpose and the policy of Mississippi that:

(a) The geologic sequestration of carbon dioxide will benefit the citizens of the state and the state's environment.

(b) Carbon dioxide is a valuable commodity to the citizens of the state.

(c) Geologic sequestration of carbon dioxide may allow for orderly withdrawal as appropriate or necessary, thereby allowing carbon dioxide to be available for commercial, industrial, or other uses, including the use of carbon dioxide for enhanced recovery of oil and gas.

(d) The state has substantial and valuable oil and gas reserves not producible by traditional recovery techniques, but which may be producible by enhanced recovery methods.

(e) The enhanced recovery of oil and gas by the injection of carbon dioxide into oil and gas reservoirs is a proven enhanced recovery method

which results in additional production of oil and gas in the State of Mississippi and the sequestration of carbon dioxide.

(f) It is for the public benefit and in the public interest that the maximum amount of the state's oil and gas reserves be produced to the extent that it is economically and technologically feasible.

(g) It is for the public benefit and in the public interest that, to the extent that it is economically and technologically feasible, carbon dioxide be injected into and stored in oil and gas reservoirs and other geologic formations in a manner protective of waters of the state as defined in Section 49-17-5(f).

(h) Providing at the election of the operator for a current or former enhanced oil or gas recovery project to qualify as a geologic sequestration project for the incidental storage of carbon dioxide will encourage enhanced oil or gas recovery projects and geologic sequestration projects and will be beneficial to the citizens of this state and will serve the public interest.

(i) Geologic sequestration of carbon dioxide is an emerging industry that has the potential to provide jobs, investment, and other economic opportunities for the people of Mississippi, and is a valuable incentive for Mississippi to attract new industry.

(j) It is the public policy of Mississippi and the purpose of this chapter to provide for a coordinated statewide program related to the geologic sequestration of carbon dioxide in reservoirs defined in this chapter and to also fulfill the state's primary responsibility for assuring compliance with the federal Safe Drinking Water Act, including any amendments thereto related to the underground injection of carbon dioxide for geologic sequestration.

(2) The commission and permit board shall have jurisdiction and authority over all persons and property necessary to enforce effectively the provisions of this chapter relating to the geologic sequestration of carbon dioxide streams and subsequent withdrawal of stored carbon dioxide streams. The department, as staff of the commission and the permit board and on behalf of the State of Mississippi, shall seek primacy from the U.S. Environmental Protection Agency for Class VI underground injection control wells. The commission shall enforce the law pursuant to Sections 49-17-1, et seq. Except for Class VI underground injection control wells for which the board shall be the permitting agency: (a) the permit board shall serve as the permitting agency for Class VI underground injection control wells pursuant to Sections 49-17-28 and 49-17-29; and (b) the commission and permit board are authorized to promulgate such rules and regulations as are necessary for the development and administration of the Class VI underground injection control well program consistent with federal statutes, rules and regulations pertaining to geologic sequestration of carbon dioxide streams and assessment of fees for the development and administration of the Class VI underground injection control well program. Underground formations or strata not included in the term "reservoir" as defined in this chapter shall be subject to the jurisdiction of the commission and the permit board. Notwithstanding the foregoing, the board has primacy

for Class II underground injection control wells and, through a written memorandum of understanding with the department, the board will have jurisdiction and authority over Class II underground injection control wells converted to Class VI underground injection control wells and Class VI underground injection control wells within reservoirs as defined in this chapter. All rules, regulations and standards promulgated by the commission, permit board and the board shall be consistent with the requirements of federal statutes, rules and regulations related to Class VI underground injection control wells.

SOURCES: Laws, 2011, ch. 437, § 2, eff from and after passage (approved Mar. 23, 2011.)

Cross References — Definitions of terms used in this chapter, see § 53-11-5.
Federal Aspects — Safe Drinking Water Act, see 42 USCS §§ 300(f) et seq.

§ 53-11-5. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed unless the context clearly indicates otherwise:

(a) "Board" means the State Oil and Gas Board created by Section 53-1-5.

(b) "Carbon dioxide" means: (i) naturally occurring carbon dioxide; (ii) geologically sourced carbon dioxide; (iii) anthropogenic carbon dioxide; or (iv) carbon dioxide stream. The term includes phases of carbon dioxide, whether fluid, liquid or gaseous, stripped, segregated, or divided from any other fluid stream thereof.

(c) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This paragraph (c) does not apply to any carbon dioxide stream that meets the definition of hazardous waste under federal environmental laws and regulations.

(d) "Class VI underground injection control wells" means wells that are not experimental in nature, that are used for geologic sequestration of a carbon dioxide stream, either alone or in combination with injection of carbon dioxide in other forms, and which inject beneath the lowermost formation containing an underground source of drinking water.

(e) "Commission" means the Mississippi Commission on Environmental Quality created by Section 49-2-5.

(f) "Department" means the Mississippi Department of Environmental Quality created by Section 49-2-4.

(g) "Enhanced oil or gas recovery project" means secondary recovery, pressure maintenance, repressuring operations, cycling operations, water flooding operations, injection of carbon dioxide or other gaseous substances or any combination thereof, or any other form of effort calculated to increase the ultimate recovery of oil or gas or both from a reservoir.

(h) "Gas" has the same meaning as provided in Section 53-1-3(d).

(i) "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. For purposes of this chapter, "storage" and "sequestration" have the same meaning. This term does not apply to carbon dioxide capture or transport.

(j) "Geologic sequestration facility" means a facility that receives and contains or sequesters carbon dioxide, or has done so, including:

(i) The reservoir into which carbon dioxide is injected;

(ii) Sequestration wells, monitoring wells, underground equipment, and surface buildings and equipment utilized in geologic sequestration, owned by or under the control of the storage operator; and

(iii) Other property identified by the board or the commission, as applicable, as part of the facility.

The reservoir component of the geologic sequestration facility includes any necessary and reasonable buffer and subsurface monitoring zones designated by the board for the purpose of ensuring the safe and efficient operation of the geologic sequestration facility for the containment or sequestration of carbon dioxide and shall be chosen to protect against escape or migration of carbon dioxide. Nothing in this definition shall prevent orderly withdrawal of the contained carbon dioxide as appropriate or necessary to allow carbon dioxide to be available for enhanced oil or gas recovery projects or other authorized commercial, and industrial uses.

(k) "Oil" has the same meaning as provided in Section 53-1-3(c).

(*l*) "Oil and gas reservoir" shall mean a pool or field as defined in Section 53-1-3(e) and (f).

(m) "Owner," except when used in the phrases "working owner" or "royalty owner," shall have its ordinary, accepted meaning.

(n) "Permit board" means the Mississippi Environmental Permit Board created by Section 49-17-28.

(o) "Person" means any natural person, corporation, association, partnership, limited liability company, or other entity, receiver, executor, administrator, fiduciary or representative of any kind.

(p) "Reservoir" means oil and gas reservoirs and formations above and below oil and gas reservoirs suitable for or capable of being made suitable for the injection and storage of carbon dioxide therein, but only those formations for which the boundaries have been or can be delineated as provided in this chapter.

(q) "Royalty owner" means any person who possesses an interest in production of oil, gas or other commercial minerals, but who is not a "working owner" as defined in this section.

(r) "Safe Drinking Water Act" means the Safe Drinking Water Act, as amended, Title 42, Chapter 6A, Subchapter XII (42 USCS Section 300(f) et seq.).

(s) "Sequestration" means geologic sequestration as used in this chapter and may include the incidental storage of carbon dioxide associated with enhanced oil recovery or gas recovery project operations.

(t) "State" means the State of Mississippi.

(u) "Storage operator" means the person authorized by the board to operate a geologic sequestration facility.

(v) "Underground source of drinking water" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than ten thousand (10,000) milligrams per liter total dissolved solids and is not an exempted aquifer.

(w) "Working owner" means the person who has the right to drill into and produce from any pool of oil, gas or other commercial minerals, and to appropriate the production either for himself or for himself and another or others.

SOURCES: Laws, 2011, ch. 437, § 3, eff from and after passage (approved Mar. 23, 2011.)

Cross References — Definition of the term "unit area," see § 53-11-15.
Definition of "interested person," see § 53-11-31.

§ 53-11-7. Duties and powers of the board; rules and regulations; permits.

(1) The board shall have authority to regulate and promulgate rules and regulations governing geologic sequestration of carbon dioxide and underground injection wells under this chapter within reservoirs. Rules and regulations governing injection wells for geologic sequestration not regulated under the board's authority for Class II wells shall be subject to approval of the commission to be included in a memorandum of understanding between the board and the commission.

(2) The board shall have authority to:

(a) Approve geologic sequestration of carbon dioxide and the operation of a geologic sequestration facility within a reservoir as defined in this chapter.

(b) Regulate the development and operation of geologic sequestration facilities and pipelines within geologic sequestration facilities, provided those pipelines serving such facilities approved hereunder are not otherwise covered under applicable law.

(c) Perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, with respect to the sequestration of carbon dioxide within reservoirs.

(d) Approve conversion of an existing enhanced oil or gas recovery operation into a geologic sequestration facility and continuing of the authority and prior approvals of the board regarding unit operations.

(e) Approve use of carbon dioxide for enhanced oil or gas recovery and for simultaneous geologic sequestration within a reservoir.

(f) Establish requirements for reasonable performance bonds, deposits, or other assurances of performance consistent with federal statutes, rules

and regulations connected with Class VI underground injection control wells to be posted as a condition to or requirement for approving an application by the storage operator, and requirements for the sufficiency and character of the surety and guarantors of performance bonds, deposits, or other assurances of performance and reasonable conditions under which the bonds or deposits shall be released.

(g) Make, after notice and hearings as provided in Sections 53-1-19 through 53-1-37, any reasonable rules, regulations and orders that are necessary from time to time in the proper administration and enforcement of this chapter. To that end, the board is authorized and empowered to adopt, modify, repeal and enforce procedural, interpretive and administrative rules in accordance with the provisions of this chapter.

(3) Only a storage operator shall be held or deemed responsible for the performance of any actions required by the board under this chapter.

(4) The board shall issue such orders, rules and regulations as may be necessary for the purpose of protecting any reservoir, strata, or formation against the escape of carbon dioxide therefrom, including any necessary rules and regulations as may pertain to the drilling into or through a geologic sequestration reservoir within the board's jurisdiction.

SOURCES: Laws, 2011, ch. 437, § 4, eff from and after passage (approved Mar. 23, 2011.)

Federal Aspects — Safe Drinking Water Act, see 42 USCS §§ 300(f) et seq.

§ 53-11-9. Approval of reservoir storage; title to carbon dioxide.

(1) The board may enter an order, after notice and hearing pursuant to the provisions of Sections 53-1-19 through 53-1-37, approving any proposed geologic sequestration of carbon dioxide. The board shall be authorized to issue an order upon finding the following:

(a) That the reservoir sought to be used as a reservoir for the injection, storage and withdrawal of carbon dioxide is suitable and feasible for such use and in the public interest;

(b) That a majority interest, as provided in this chapter, have consented to such use in writing;

(c) That there is no reasonable risk that the use of the reservoir for the storage of carbon dioxide will injure or endanger other formations containing fresh water, oil, gas or other commercial mineral deposits;

(d) That there is no reasonable risk that the proposed storage will endanger human lives or cause a hazardous condition to property; and

(e) In the case of a reservoir that may contain oil, gas or other commercial minerals, that either:

(i) The reservoir has been substantially depleted of all volumes of reservoir oil, gas or other commercial minerals and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied; or

(ii) The reservoir has a greater value or utility as a reservoir for carbon dioxide storage than for the production of the remaining volumes of reservoir oil, gas, condensate or other commercial mineral, if any, and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied. Approval of a geologic sequestration facility by the board shall provide full and complete authority for the construction, equipping and operation of the geologic sequestration facility without need of further action or grant by any person.

(2) Neither injection nor an order of the board shall affect ownership of the carbon dioxide or inhibit the voluntary conveyance of title to the carbon dioxide by the owner. The board may issue any necessary order to protect the title of an owner to carbon dioxide injected into a geologic sequestration facility. The carbon dioxide shall not be subject to the right of any person other than the owner of the carbon dioxide to produce, take, reduce to possession, or otherwise interfere with or exercise any control thereover. The owner of the carbon dioxide shall have no right to gas, liquid hydrocarbons, salt or other commercial minerals in any stratum or portion thereof not determined by the board to constitute an approved sequestration reservoir which are not otherwise owned or leased by the owner.

SOURCES: Laws, 2011, ch. 437, § 5, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-11. Protection of correlative rights.

(1) Upon application by an operator to unitize for a geologic sequestration facility in an oil or gas reservoir that is not unitized either under this chapter or by board order under the provisions of Sections 53-3-103 or 53-3-155, after notice as provided in Section 53-3-115, the board shall hold a hearing to consider the operation of the reservoir for the storage of carbon dioxide to determine whether the predominant result of the injection operations will be the storage of carbon dioxide or will result in an increase in the ultimate recovery of oil or gas, or both, from the proposed geologic sequestration facility. After the hearing the board may:

(a) Determine from the evidence that the reservoir has more value as a geologic sequestration facility than as an enhanced oil or gas recovery project, and as a result, the board shall enter an order for the operation of the unit as a geologic sequestration facility upon making the additional findings set forth in Section 53-11-13.

(b) Determine from the evidence that the predominant result of the injection operations will be an increase in the ultimate recovery of oil or gas or both, and as a result, the board shall not approve the application for a geologic sequestration facility. However, this shall not prevent the board, upon application of the operator, from approving operation of an existing enhanced oil or gas recovery project simultaneously as a geologic sequestration project, recognizing the incidental storage of carbon dioxide under the provisions set forth in Section 53-11-15(1)(d).

(2) Upon application by an operator to unitize for a geologic sequestration facility in any other nonoil, nongas or noncommercial mineral-bearing reservoir that needs to be unitized, after notice as provided, the board shall hold a hearing to consider the evidence, and shall enter an order for the operation of the reservoir as a geologic sequestration facility upon making the findings set forth in Sections 53-11-9(1) and 53-11-13.

(3) An order requiring unit operations of a geologic sequestration facility shall be effective only when the unit for the geologic sequestration facility and the agreements incorporating the pertinent provisions of Section 53-11-15 have been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area, and, if separately owned, a majority interest of all rights of the subsurface reservoir, on the basis of and in proportion to the surface acreage content of the unit area, and the board has made a finding to that effect, either in the order or in a supplemental order.

(4) If the board finds under Section 53-11-9(1)(e) that a reservoir has been substantially depleted of commercially recoverable quantities of oil or gas or other commercial minerals or that the reservoir has greater utility as a reservoir for carbon dioxide storage and that the remaining conditions of Section 53-11-9(1) have been satisfied; or if the board finds that a nonoil, nongas or noncommercial mineral-bearing reservoir satisfies the conditions of Section 53-11-9(1)(a) through (d) and all other conditions the board shall require have been satisfied, the board shall issue an order approving the reservoir for the injection and storage of carbon dioxide in connection with operation of a geologic sequestration facility. An order approving any geologic sequestration facility shall be effective only when the storage rights agreement has been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area under the terms of the order; and, if separately owned, a majority interest of all rights in the underground reservoir, on the basis of, and in proportion to, the surface acreage content of the unit area. If oil, gas or commercial minerals are expected to be produced and sold or used in connection with the geologic sequestration facility in a depleted oil, gas or commercial mineral-bearing reservoir, or such a reservoir that has greater utility as a geologic sequestration facility, then a majority interest of all working owners of such oil, gas or commercial minerals, on the basis of, and in proportion to, the surface acreage content of the unit area under the terms of the order, must also consent to the allocation of the production in writing before an order approving the geologic sequestration facility shall be effective.

(5) In the event the required percentages set forth in this section have not signed, ratified or approved the respective agreements within twelve (12) months from and after the date of the order, the order requiring unit operation shall be automatically revoked.

SOURCES: Laws, 2011, ch. 437, § 6, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-13. Order requiring unit operation of a geologic sequestration facility.

If the board finds pursuant to Section 53-11-9(1) that a reservoir shall be operated as a unit for a geologic sequestration facility, the board may issue an order requiring such unit operation, if it finds that:

(a) Unit operation of the reservoir is reasonably necessary in order to create and operate an approved geologic sequestration facility in the reservoir;

(b) The unit for the geologic sequestration facility and the agreements effectuating the unit are fair and reasonable under all of the circumstances and protect the rights of all interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir;

(c) The correlative rights of all owners of interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir will be protected;

(d) The cost incident to conducting the geologic sequestration operation will not be borne by the royalty owners of the oil, gas or other commercial minerals except for post-production treating, processing, transportation, and marketing expenses when concurrent production occurs with the geologic sequestration operation; and

(e) The storage operator or a predecessor operator of a proposed sequestration facility has demonstrated the boundaries of the unit as may be necessary for the board to approve the unit by the drilling of wells to sufficient depths and locations, or by other geological or engineering interpretations which may include those from logging, coring, modeling or monitoring.

SOURCES: Laws, 2011, ch. 437, § 7, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-15. Board order provisions.

(1) The order issued by the State Oil and Gas Board shall be fair and reasonable under all of the circumstances and shall protect the rights of interested parties and shall include:

(a) A description of the geographical area and a description of the reservoirs or of any portion or portions or combinations thereof affected which together constitute and are herein termed the "unit area" of the geologic storage facility.

(b) A statement of the nature of the operations contemplated.

(c) A provision for: (i) access to and use of a reasonable amount of the surface area within the unit area by the storage operator and his agents in connection with constructing, equipping, operating, maintaining and termi-

nating operations of the geologic sequestration facility; and (ii) payment of the reasonable costs of compensable damages to the surface and reasonable consideration for use of the surface area.

(d) If oil or gas or both are expected to be produced in connection with operating a unit area as a geologic sequestration facility and the reservoir is being operated under a board order obtained pursuant to the requirements of Section 53-3-101 et seq., the geologic sequestration facility may be operated under the existing plan of unitization approved by the owners therein provided that the unit operator: (i) provides a method approved by the board for winding down oil and gas operations for the transition to a carbon dioxide injection only operation; and (ii) obtains the approval of a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area, prior to the termination of oil and gas production.

(e) If oil or gas or both are expected to be produced in connection with operating the geologic sequestration facility and the reservoir has not formerly been unitized by board order under Sections 53-3-101 et seq., the order shall include:

(i) A formula for the allocation among the separately owned tracts in the geologic sequestration unit area of all the oil or gas, or both, produced and saved from the geologic sequestration unit area, and not required in the conduct of such operation, which formula must expressly be found reasonably to permit persons otherwise entitled to share in or benefit by the production from the separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production. A separately owned tract's fair, equitable and reasonable share of the unit production shall be that proportionate part of unit production that the contributing value of the tract for oil and gas purposes in the geologic sequestration unit area and its contributing value to the unit bears to the total of all like values of all tracts in the unit, taking into account all pertinent engineering, geological and operating factors that are reasonably susceptible of determination.

(ii) A provision for adjustment among the owners of the geologic sequestration unit area, not including royalty owners, of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the unit operations. The amount to be charged to unit operations for any such item shall be determined by a majority of the owners of the geologic sequestration unit area and a majority of the working owners of the oil and/or gas interests in the geologic sequestration unit area, not including royalty owners, but if the owners of the geologic sequestration unit area and working owners of the oil or gas, or both oil and gas interests, not including royalty owners, are unable to agree upon the amount of the charges, or to agree upon the correctness thereof, the board shall determine the charges after due notice and hearing upon the application of any interested party. The amount charged against the owner of a separately owned tract shall be considered

an expense of unit operation chargeable against the tract. The adjustments provided for in this subparagraph (ii) may be treated separately and handled by agreements separate from the unitization agreement.

(iii) A provision that the costs and expenses of unit operations dedicated to producing oil and gas, including investment past and prospective, shall be borne by the working owners of each tract, who in the absence of unit operation would be responsible for the expenses of developing and operating the oil and gas pools or reservoirs, in the same proportion that the tracts share in unit production. Each working owner's interest in the oil or gas or both expected to be produced in connection with operating the geologic sequestration unit area shall be responsible for the working owner's proportionate share thereof, and the unit operator shall have a lien thereon to secure payment of the working owner's share together with interest at the legal rate. A transfer or conversion of any working owner's interest or any portion thereof, however accomplished after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations, past or prospective.

(iv) The designation of, or a provision for the selection of a successor to, the storage operator.

(v) A provision that the conduct of all unit operations by the storage operator and the selection of a successor to the storage operator shall be governed by the terms and provisions of the geologic sequestration facility agreements.

(vi) A determination of, or a provision for determining, the time the oil and gas unit operation is to become effective.

(vii) A determination of, or a provision for determining, the manner in which, and the circumstances under which, the unit oil and gas operation shall terminate and the geologic sequestration facility will no longer be considered productive of oil and gas or other commercial minerals and the geologic sequestration facility will be operated solely for the injection of carbon dioxide.

(viii) A requirement that all oil or gas, or both oil and gas, contained in a unit area shall be produced and sold as rapidly as possible without decreasing the ultimate recovery of oil or gas, or both, or causing damage to the reservoir.

(2) If oil or gas, or both, are being produced as an enhanced recovery project operating under a board order obtained pursuant to the requirements of Section 53-3-101 et seq., utilizing the injection of carbon dioxide for enhanced oil or gas recovery, the board, upon application by the unit operator, may make an order recognizing the incidental sequestration of carbon dioxide that is occurring during its enhanced oil or gas recovery project without requiring the project to qualify as a geologic sequestration facility or otherwise be subject to the provisions of this chapter.

SOURCES: Laws, 2011, ch. 437, § 8, eff from and after passage (approved Mar. 23, 2011.)

Cross References — State Oil and Gas Board generally, see §§ 53-1-1 et seq.

§ 53-11-17. Hearings before the board; notice; rules of procedures; emergency; service of process; public records; request for hearings; orders and compliance orders.

All public hearings before the board under this chapter shall be conducted pursuant to the provisions of Sections 53-1-19 through 53-1-37.

SOURCES: Laws, 2011, ch. 437, § 9, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-19. Compliance and enforcement.

(1) Whenever the board or an authorized representative of the board determines that a violation of any requirement of this chapter has occurred or is threatened, the board shall be authorized to either issue an order requiring compliance within a specified time period or commence a civil action for appropriate relief, including a temporary or permanent injunction.

(2) Any compliance order issued by the board under this chapter shall state with reasonable specificity the nature of the violation and specify a time for compliance and, in the event of noncompliance, assess a civil penalty, if any, which the board determines is reasonable of not more than Five Thousand Dollars ($5,000.00) a day for each day of violation and for each act of violation, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(3) Except as otherwise provided by law, any person to whom a compliance order is issued and who fails to take corrective action within the time specified in the order or any person found by the board to be in violation of any requirement of this section may be liable for a civil penalty, to be assessed by the board or court, of not more than Five Thousand Dollars ($5,000.00) per day for each day of violation and for each act of violation. In order to enforce the provisions of this section, the board may suspend or revoke any permit, compliance order, license, or variance that has been issued to a person in accordance with law. No penalty shall be assessed by the board until the person charged has been given notice and an opportunity for a hearing on the charge. In determining whether a civil penalty is to be assessed and in determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

(4) The board, or Attorney General if requested by the board, shall have charge of and shall prosecute all civil cases arising out of violation of any provision of this section including the recovery of penalties.

(5) Except as otherwise provided by law, the board may settle or resolve as the board may deem advantageous to the state any suits, disputes or claims within the jurisdiction of the board for any penalty under any provisions of this section or the regulations or permit license terms and conditions applicable thereto.

SOURCES: Laws, 2011, ch. 437, § 10, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-21. Effect of acting as storage operator.

Any provision in this chapter, or in any rule, regulation or order issued by the board under this chapter to the contrary notwithstanding, acting as a storage operator pursuant to this chapter in compliance with the provisions of this chapter, or with rules, regulations or orders issued by the board under this chapter, or voluntarily performing any act or acts which could be required by the board pursuant to this chapter, or rules, regulations or orders issued by the board under this chapter, shall not:

(a) Cause any storage operator or transporter of carbon dioxide for storage to become, or be classified as, a common carrier or a public utility for any purpose whatsoever.

(b) Subject the storage operator or carbon dioxide transporter to any duties, obligations or liabilities as a common carrier or public utility, under the Constitution and laws of this state.

SOURCES: Laws, 2011, ch. 437, § 11, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-23. Fees; creation of Carbon Dioxide Storage Fund.

(1)(a) The board is authorized to adopt regulations within its jurisdiction to assess sequestration fees that shall be subject to the approval of the Legislature.

(b) Any monies collected shall be used exclusively: (i) to pay the expenses and other costs connected with administration and enforcement of this chapter and the rules, regulations and orders of the board pursuant to this chapter; and (ii) to fund the Carbon Dioxide Storage Fund established in this chapter.

(c) Any per-ton fee shall first be applied to the administration and enforcement costs of the board's activities required or authorized by this chapter, and any amount exceeding those costs shall be transferred to a separate special fund of the State Oil and Gas Board which is hereby created and is to be known as the Carbon Dioxide Storage Fund.

(d) Transfers to the Carbon Dioxide Storage Fund from the per-ton fees shall be made monthly. Transfers from excess funds collected under subsection (1)(c) of this section may be made at any time in the fiscal year that the board shall determine appropriate. At the beginning of the following fiscal year after the transfer of the excess funds, the rate or rates to be collected

under subsection (1)(c) of this section shall be reduced to reflect the excess from the prior year.

(e) When the balance in the Carbon Dioxide Storage Fund reaches or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the board shall abate the per-ton fee, and may adjust the annual regulatory fee as prescribed herein. The abatement shall be effective at the beginning of the ensuing fiscal year. When the Carbon Dioxide Storage Fund is reduced below Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the per-ton fee shall again be imposed on all geologic storage operators until such time as the fund shall reach or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility. The imposition of the per-ton fee shall be effective at the beginning of the ensuing fiscal year.

(f) Monies in the Carbon Dioxide Storage Fund created in this chapter may be used in the board's discretion but only if inadequate funds are available from responsible parties including the financial assurance funds provided in Section 53-11-27(2). Monies in the Carbon Dioxide Storage Fund shall only be used for oversight of geologic storage facilities after cessation of injection at the facility and release of the facility's performance bond or other assurance of performance and as shall be necessary or appropriate to satisfy the requirements of the federal Safe Drinking Water Act, including, without limitation, matters with respect to closed facilities such as: (i) inspecting, testing and monitoring of the facility, including remaining surface facilities and wells; (ii) repairing mechanical problems associated with remaining wells and surface infrastructure; and (iii) repairing mechanical leaks at the facility.

(g) The Carbon Dioxide Storage Fund shall be used for the purposes set forth in this chapter and for no other governmental purposes, nor shall any portion of the fund ever be available to borrow from by any branch of government, it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate. Any interest earned on monies in this fund shall remain in this fund and shall not lapse into the General Fund.

(2) To facilitate the proper administration of the Class VI underground injection control program within its jurisdiction, the commission is authorized to assess and collect fees from Class VI permit applicants for Class VI underground injection control wells permitted by the permit board. The commission is further authorized to promulgate rules and regulations for the assessment and collection of permit fees for Class VI underground injection control wells within its jurisdiction.

SOURCES: Laws, 2011, ch. 437, § 12, eff from and after passage (approved Mar. 23, 2011.)

Cross References — State Oil and Gas Board generally, see §§ 53-1-1 et seq.
Federal Aspects — Safe Drinking Water Act, see 42 USCS §§ 300(f) et seq.

§ 53-11-25. Cessation of storage operations.

(1) After cessation of injection into a geologic sequestration facility and upon application by the storage operator, the board shall be authorized to issue a certificate of completion of injection operations upon a showing by the storage operator that the reservoir is reasonably expected to retain mechanical integrity, and that carbon dioxide will reasonably remain emplaced.

(2) Nothing in this chapter shall establish or create any liability or responsibility on the part of the board or the state to pay any costs associated with facility restoration from any source other than the performance bond, deposit, other assurance of performance, or financial assurances posted or required pursuant to this chapter, nor shall the board or the state have any liability or responsibility to make any payments for costs associated with facility restoration.

(3) The board or its agents, on proper identification, may enter the land of another for purposes of facility assessment or restoration.

(4) The board and its agents are not liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this chapter.

(5) No party contracting with the state or any of its political subdivisions under the provisions of this chapter shall be deemed to be a public employee or agent of the State of Mississippi or any of its political subdivisions.

SOURCES: Laws, 2011, ch. 437, § 13, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-27. Release of performance bond, deposit, or other assurance of performance.

(1) The storage operator may file an application with the board for the release of the performance bond, deposit or other assurance of performance on or after the third anniversary of the date the board issued a certificate of completion for the geologic sequestration facility. An application for a release shall require a description of the status of the carbon dioxide plume development or migration compared to models previously provided to the board, and any other information the board may reasonably require in accordance with this chapter. The board shall give notice of the pending release application by publication as provided in Section 53-3-115.

(2) Before the board's release of all or any portion of a storage operator's performance bond, deposit or other assurance of performance, the board shall require that the storage operator satisfy, in the reasonable determination of the board, the financial assurance requirements of the federal Safe Drinking Water Act and regulations promulgated thereunder. If the financial assurance has as any component a trust or standby trust, the board and the state shall be named as trust beneficiaries. The trust situs shall be located in the state, and at least one (1) trustee shall be a legal resident of the state.

(3) The board may release, in whole or in part, the performance bond, deposit or other assurance of performance if it is satisfied that plume migration

has stabilized or is developing in the manner anticipated in models previously filed with the board and the geologic sequestration facility has met all necessary mechanical integrity requirements.

(4) When the storage operator has successfully completed any necessary remedial actions required by the board, but not more than two (2) years beyond the date of the board's initial, partial release of the performance bond, deposit or other assurance of performance, the board shall release the remaining portion of the performance bond, deposit or other assurance of performance. However, no performance bond, deposit or other assurance of performance shall be fully released until all requirements of this chapter are fully met.

(5) If the board denies the application for release of the performance bond, deposit or other assurance of performance or portion thereof, it shall notify the storage operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(6) Full release by the board of the performance bond, deposit or other assurance of performance of the storage operator or any other party holding title to the stored carbon dioxide, shall not affect, either to enlarge or diminish in any way, any legal obligations of the owner of the carbon dioxide or an owner or operator of any carbon dioxide sequestration facility resulting from the actions authorized pursuant to this chapter.

(7) Substantial compliance with this chapter shall in no way be construed to be an absolute defense to civil liability.

SOURCES: Laws, 2011, ch. 437, § 14, eff from and after passage (approved Mar. 23, 2011.)

Federal Aspects — Safe Drinking Water Act, see 42 USCS §§ 300(f) et seq.

§ 53-11-29. Refusing to monitor or producing false or inaccurate readings.

It shall be a violation of this chapter for any person to refuse to attach or install a monitor within a reasonable period of time when ordered to do so by the board, or in any way to tamper with the monitors so as to produce a false or inaccurate reading.

SOURCES: Laws, 2011, ch. 437, § 15, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-31. Appeal to chancery court.

Any interested person adversely affected by any provision or section of this chapter within the jurisdiction of the board or by any rule, regulation or order made by the board thereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county in which the land involved, or any part thereof, is situated. The term "interested person" shall be interpreted broadly and liberally and shall

include all mineral and royalty owners, mineral lessees, if any, and the owners of surface on which injection or re-injection wells and other surface equipment connected with a geologic sequestration facility is or will be situated. Any interested party may appeal to the chancery court of the county in which the land involved or any part thereof is situated, if appeal is demanded within thirty (30) days from the date that the rule, regulation or order of the board is filed for record in the office of the board.

The appeal may be taken by filing notice of the appeal with the board, whereupon the board shall, under its certificate, transmit to the court appealed to all documents and papers on file in the matter, together with a transcript of the record, which documents and papers together with said transcript of the record shall be transmitted to the clerk of the chancery court of the county to which the appeal is taken.

Except as otherwise provided in this section, the appeal otherwise shall be made in accordance with the provisions of Sections 53-1-39 and 53-1-41.

SOURCES: Laws, 2011, ch. 437, § 16, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-33. No effect upon enhanced oil or gas recovery operations.

Notwithstanding anything to the contrary in this chapter, nothing in this chapter shall prevent an enhanced oil or gas recovery project utilizing injection of carbon dioxide as approved by the board under Section 53-1-17 or require compliance with all or part of this chapter by any enhanced oil or gas recovery project that is not a geologic sequestration facility. An operator of an enhanced oil or gas recovery project utilizing injection of carbon dioxide may request that the board approve such a project as a geologic sequestration facility under this chapter or that the board determine that injection activities constitute the sequestration of carbon dioxide, but nothing in this chapter shall require that such a request be made. No provision of this chapter shall affect or govern any aspect of an enhanced oil or gas recovery project utilizing injection of carbon dioxide unless and until the operator of such project has requested that a particular project be approved by the board as a geologic sequestration facility and the board has granted that request.

SOURCES: Laws, 2011, ch. 437, § 17, eff from and after passage (approved Mar. 23, 2011.)

Index

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